



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-01340  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Department Counsel  
For Applicant: *Pro Se*

March 31, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on November 21, 2008. (Government Exhibit 4). On July 1, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended) issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 12, 2009, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 11, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 22, 2009, and she submitted no reply. The case was originally assigned to another Administrative Judge on December 4, 2009. The matter was transferred to the undersigned for resolution on February 1, 2010. Based upon a review of the case file, pleadings and exhibits eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 57 years old and has a high school diploma. She is employed by a defense contractor as an Administrator, and is seeking to obtain a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant admits twelve of the thirteen past due debts and judgments set forth in the SOR under this paragraph, that include allegations 1(a) through 1(m), except allegation 1(j). Credit reports of the Applicant dated June 18, 2009, and December 3, 2008, indicate that she remains indebted in the amount of approximately \$282,822.00. (Government Exhibits 6 and 7). Applicant claims that the debts were incurred as a result of a failed catering business due to the bad economy. (Government Exhibit 3). She states that she became excessively indebted and also lost her house in foreclosure. She indicates that she has filed a petition in Bankruptcy and plans to discharge all of the debts in the SOR. Applicant provided a copy of a letter from her attorneys indicating that her Bankruptcy petition was filed on July 10, 2009. (Government Exhibit 3). Her meeting of creditors was scheduled for August 19, 2009. She is awaiting a final discharge of her debts. She also submitted a copy of a certificate indicating that she has participated in the mandatory debtor education class in connection with her bankruptcy. (Government Exhibit 3).

Applicant received the FORM on September 22, 2009, and was given the opportunity to respond to the FORM concerning the present status of her bankruptcy case, which is critical in this case. (See file). Her response was due by October 22, 2009, but she failed to respond. There is no evidence in the record to substantiate a failed business or that any of the delinquent debts in the SOR were in fact discharged by the court. Thus, the delinquent debts remain outstanding. Applicant's financial history shows no track record of financial responsibility. Furthermore, there is no evidence in the record as to whether she has sufficient income at this time, even if the debts are considered discharged, to pay her current monthly expenses in a timely manner.

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

#### Conditions that could raise a security concern:

- 19.(a) inability or unwillingness to satisfy debts;
- 19.(c) a history of not meeting financial obligations.

#### Conditions that could mitigate security concerns:

20.(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavior changes;

- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

## **CONCLUSION**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of financial irresponsibility which demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of

the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Considering all of the evidence, the Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. Under the circumstances, she has failed to make a good faith effort to resolve her indebtedness, because she failed to submit sufficient documentary evidence to support her allegations. Applicant contends that the debts listed in the SOR are in her bankruptcy petition and that they will be discharged at some future date. She did not submit a copy of the actual bankruptcy petition, nor did she respond to the FORM to provide the court with additional documentary information concerning the status of her delinquent debts. She failed to provide any evidence other than the letter from her attorneys that a petition in bankruptcy was filed and a meeting of the creditors was scheduled that required her appearance. Without more, it is impossible to determine that the Applicant has resolved her indebtedness, or that she is sufficiently financially responsible for access to classified information. She has failed to demonstrate that she can properly handle her financial affairs.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; 19.(c) *a history of not meeting financial obligations* apply. Although there is some evidence that Mitigating Condition 20.(b) *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances* may apply, it is insufficient in this case based upon the large amount of debt and the Applicant's failure to provide sufficient documentary evidence of her failed business. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented and it does not sufficiently mitigate the adverse information brought against her. On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

## **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:           Against the Applicant.  
Subpara. 1.a.:       Against the Applicant.  
Subpara. 1.b.:       Against the Applicant.  
Subpara. 1.c.:       Against the Applicant.  
Subpara. 1.d.:       Against the Applicant.  
Subpara. 1.e.:       Against the Applicant.  
Subpara. 1.f.:       Against the Applicant.  
Subpara. 1.g.:       Against the Applicant.  
Subpara. 1.h.:       Against the Applicant.  
Subpara. 1.i.:       Against the Applicant.  
Subpara. 1.j.:       Against the Applicant.  
Subpara. 1.j.:       Against the Applicant.  
Subpara. 1.k.:       Against the Applicant.  
Subpara. 1.l.:       Against the Applicant.  
Subpara. 1.m.:       Against the Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge