



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-03102  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

October 27, 2010

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on December 30, 2008. (Government Exhibit 1.) On January 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, "Safeguarding Classified Information Within Industry" (February 20, 1960), as amended; Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on January 29, 2010, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to another Administrative Judge on March 4, 2010. It was transferred to the undersigned on April 28, 2010. A notice of hearing was issued on June 2, 2010, scheduling the hearing for July 26, 2010. The Government presented six exhibits, referred to Government Exhibits

1 to 6, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were admitted without objection. The Applicant also testified on her own behalf. The record remained open until August 10, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted eight Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits E through L. The official transcript (Tr.) was received on July 30, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 47 years old, and has a high school diploma and two and a half years of college. She was employed by a defense contractor as a Budget Analyst and was laid off pending the results of this matter. She 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits allegations 1 (a) to 1(m) and 1(u), as set forth under this guideline of the SOR. She denies allegations 1(n) through 1(t). The debts that the Applicant denies are debts that she states were incurred as a result of identity theft. The delinquent debts set forth in the SOR total in excess of \$50,000. (Applicant's Answer to SOR.) Credit Reports of the Applicant dated January 29, 2009; November 19, 2009; and February 25, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4 and 5.)

Since 2002, the Applicant has made several attempts, in 2004, 2006-07 and 2010, at working with consumer credit counselors to assist her in resolving her indebtedness. (Applicant's Post-Hearing Exhibits E and I.) Each time, she has had to discontinue the process after making several payments under the plans when some unexpected event would cause her to get off track financially and she would not be able to continue the program. (Tr. p. 66.) The Applicant contends that some of the debt in the SOR is joint debt incurred during the course of the marriage that her husband should be responsible for. The following situations caused her indebtedness.

When the Applicant met her husband, a Navy enlisted man, in 1988/89, he had financial problems. She helped clean up his credit. They were married in 1990, and had a son in 1994. In November 1995, her husband was deployed and he started accruing more debt. He was also paying child support for two other children from a previous marriage. In 1996, when her husband returned from deployment, they moved into military housing, and were better able to pay their bills, although some still fell behind. The Applicant started working in the defense industry, and using her credit cards to obtain household items and getting cash advances to pay bills. (Applicant's Exhibit A.)

In 2002, her husband's mother came to live with the Applicant and her husband. This presented more financial strain, and they continued to accrue debt. The Applicant attempted to start a home business to provide extra income, but it only created more debt. In 2003, the Applicant's husband retired from the Navy. In March 2003, her husband's mother passed away, and they had to pay for the funeral arrangements and an out of state burial. Following this, the Applicant's husband was unable to find work until September 2003. From 1995 to October 2003, they lived in military housing. In October 2003, they moved out of military housing and had to reimburse the Navy for overstaying. The Applicant then had the expense of paying for rent on the open market, which they could not afford. At some point, they moved in with a friend for a month and then in a studio apartment. They had to pay for monthly storage fees to keep their possessions.

In 2004, the Applicant and her husband were both employed. They were also receiving her husband's Navy retirement benefits, and she won a jackpot of \$7,000 from a local casino. That year they ended up owing taxes. (Tr. p. 60.) It was also about this time that they were both trying to pay their individual debts. That year, her car was stolen, and her father had a quadruple by pass that only added to the strain. In May 2005, the Applicant and her husband separated. (Applicant's Post-Hearing Exhibit L.) She borrowed from her 401(k) to pay for moving expenses for the both of them and to pay for storage fees, IRS and state tax payments and for the upkeep of her car once it was found. (Applicant's Post-Hearing Exhibit F.) She asked him to pay child support to help her out, but he did not. (Applicant's Exhibit A.)

In May 2006, the Applicant had a car accident which caused chronic neck pain. Her closest friend was diagnosed with lung cancer. The Applicant started using payday loans to keep up with her expenses. She ended up losing her items in storage to a lien sale in 2007, as she was unable to maintain the payments. In November 2007, her father had a massive stroke which paralyzed him on the right side of his body. He passed away in May 2008.

In March 2010, the Applicant filed for divorce and child support from her husband. (Applicant's Post-Hearing Exhibits G and L.) She is now receiving \$300.00 monthly in child support. (Tr. p. 80.) She began working for the defense contractor requesting her security clearance in July 2008. In February 2010, she was laid off from her position. She is now working part time at another company. She is currently living

beyond her means due to her job lay-off and the fact that her unemployment benefits have run out. (Tr. p. 102.)

A debt to a creditor in the amount of \$363.00 remains owing. A debt to a creditor in the amount of \$1,042.00 remains owing. A debt to a creditor in the amount of \$1,325.00 remains owing. A debt to a creditor in the amount of \$13,000 remains owing. A debt to a creditor in the amount of \$9,061.00 remains owing. A debt to a creditor in the amount of \$1,440.00 remains owing. A debt to a creditor in the amount of \$1,498.00 remains owing. A debt to a creditor in the amount of \$2,631.00 remains owing. A debt to a creditor in the amount of \$7,975.00 remains owing. A debt to a creditor in the amount of \$375.00 remains owing. A debt to a creditor in the amount of \$4,928.00 remains owing. A debt to a creditor in the amount of \$594.00 remains owing. A debt to a creditor in the amount of \$247.00 remains owing. A tax lien in the amount of \$10,000 was being garnished from the Applicant's wages but this stopped when she was laid off. (Applicant's Answer to SOR and Applicant's Exhibit D.)

The debts, set forth in allegations 1(n) through 1(t) are for medical bills that are not the Applicants. The bills appear to be under the Applicant's social security number but are under a different person's name. The Applicant reported the matter to the police station where in the bills are located, and was told to file a police report for fraud at her local police station. Without a car of her own, transportation is difficult for the Applicant. She went to file the fraud report and was told that her local police station did not have jurisdiction. So far, she has been unable to file the report. (Tr. pp. 39-40 and Applicant's Exhibit B.)

Letters of recommendation from the Applicant's coworker and friend, adopted play sister and former supervisors indicate that she is considered hardworking, conscientious, honest, reliable, and industrious. She is well respected among her personal and professional colleagues, and highly recommended for a position of trust. (Applicant's Exhibit C).

A letter from her most recent supervisor, whom the Applicant worked under for two years, states that she is a hard working self-starter on the job. She is also resourceful, creative, and solution oriented. She functions well as a team leader when required and also works effectively as a team member. She is considered extremely responsible and professional. She is highly recommended for a position of trust. (Applicant's Post-Hearing Exhibit H.)

## **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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

### 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:

None.

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 behavioral 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.”

## **CONCLUSIONS**

In the defense industry, a security clearance 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 such access 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.

With respect to the debts in the SOR that involve identity fraud, specifically allegations 1(n) through 1 (t), I find, them for the Applicant.

The Applicant's excessive indebtedness was brought on by unemployment, under-employment, credit card overspending, credit card fraud, a divorce, being a single parent without child support, and poor financial management. She is now unemployed, and she has not addressed any of her delinquent debts. Clearly she has tried on several occasions to start to resolve her indebtedness, but has not been successful. Admittedly, there have been numerous unforeseen and unfortunate events that occurred that aggravated her financial situation. However, all of the debts set forth in the SOR still remain outstanding. Although she has done her best under the circumstances, she has not been able to pay her delinquent debts. Thus, she has not demonstrated that she is financially responsible. She has not presented sufficient evidence to demonstrate a track record of financial responsibility.

There is insufficient evidence of financial rehabilitation at this time. Under Guideline F (Financial Considerations), Disqualifying Conditions 19(a) *inability or unwillingness to satisfy debts*, and 19(c) *a history of not meeting financial obligations* apply. None of the mitigating conditions are applicable. The Applicant has not made a good faith effort to repay her overdue creditors or otherwise resolve her debts. 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, an unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard classified information.

On balance, it is concluded that the Applicant has not 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 Government's Statement of Reasons.

## **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.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.
- Subpara. 1.m.: Against the Applicant.
- Subpara. 1.n.: For the Applicant.
- Subpara. 1.o.: For the Applicant.
- Subpara. 1.p.: For the Applicant.
- Subpara. 1.q.: For the Applicant.
- Subpara. 1.r.: For the Applicant.
- Subpara. 1.s.: For the Applicant.
- Subpara. 1.t.: For the Applicant.
- Subpara. 1.u.: Against the Applicant.

### **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge