



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-03393
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

July 5, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on February 23, 2009. (Government Exhibit 1.) On December 23, 2009, 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 6, 2010, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 9, 2010. A notice of hearing was issued on March 30, 2010, scheduling the hearing for May 20, 2010. The Government presented six exhibits, referred to Government Exhibits 1 to 6, which were admitted without objection. The

Applicant presented one exhibit, referred to as Applicant's Exhibit A which was admitted without objection. The Applicant also testified on her own behalf. The record remained open until June 20, 2010, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted no Post-Hearing Exhibits. The official transcript (Tr.) was received on June 10, 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 27 years old, and has a high school diploma. She is employed by a defense contractor as a Security Guard 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). 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(b), 1(c), 1(d), 1(f), 1(g),1(h), 1(k), 1(l), and denies allegations 1(a), 1(e), 1(i), 1(j), 1(m) and 1(n) of the SOR. The debts that the Applicant denies she states she has little or no recollection of. The delinquent debts set forth in the SOR total in excess of \$35,000.00. (Applicant's Answer to SOR.) Credit Reports of the Applicant dated March 13, 2009; September 9, 2009; February 24, 2009; and May 19, 2010, collectively reflect each of the delinquent debts set forth in the SOR. (Government Exhibits 3, 4, 5 and 6.)

The Applicant graduated from high school and started working. She had difficulty finding stable employment and was forced to work short term jobs that did not pay well. She was also supporting her child by herself. She was the victim of credit card fraud, but did not report it to the police. (Tr. pp. 32-33.) She also made some poor financial decisions.

In 2004, the Applicant was married, and by 2006 she was divorced. During her marriage she experienced financial problems. She testified that about half of the debts set forth in the SOR were incurred during her marriage. (Tr. p. 62.) Her ex-husband has not paid any of the debt. She states that she has taken full responsibility for them. The debts are either credit card debt, telephone bills, a cable bill, student loans, and an involuntary car repossession.

In February 2009, she began working for her current employer. Since then, she has not paid off any of her delinquent debts, nor has she contacted any of her creditors to set up payment plans. She has on two separate occasions attempted to consolidate her debts to work out a payment plan. (Tr. pp. 51-54.) She testified that the first time she paid a woman, referred to her by a friend, \$1,500.00 to clean up her credit. (Tr. p. 66). Applicant's Exhibit A is a letter from the woman's company indicating that as of August 2009, a number of the Applicant's creditors have been removed from all three credit bureaus. It does not appear that any of these creditors are creditors that are listed in the SOR. The letter also indicates that changes concerning two creditors listed in the SOR have been reported. It does not specify what changes were reported. In October or November 2009, the Applicant states that she hired a law firm she is currently working with. She is paying \$80.00 monthly for these services in hopes to consolidate her debts.

Presently, all of the debts set forth in the SOR remain outstanding and have not yet been consolidated. A creditor in the amount of \$691.00 remains outstanding. A debt remains owing to a creditor in the amount of \$677.00. A debt remains owing in the amount of \$94.00. A debt remains owing in the amount of \$990.00. A debt remains owing in the amount of \$284.00. A debt remains owing in the amount of \$3,275.00. A debt remains owing the amount of \$9,007.00. A debt remains owing in the amount of \$3,884.00. A debt remains owing in the amount of \$1,078.00. A debt remains owing in the amount of \$211.00. A debt remains owing in the amount of \$16,088.00. A debt remains owing in the amount of \$1,371.00. A debt remains owing in the amount of \$254.00. A debt remains owing in the amount of \$1,633.00.

The Applicant's income nets approximately \$1,100.00 every two weeks. She is now going to college and hopes to complete her degree in respiratory therapy in two years. Once her debts are consolidated, she plans to follow the payment plan until they are paid in full.

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.

The Applicant’s excessive indebtedness was brought on by unemployment, under-employment, credit card overspending, credit card fraud, a divorce, being a single parent, and poor financial management. Even though she is now working full time, she has not addressed any of her delinquent debts. She indicates that she has tried on two separate occasions to get her debts consolidated, but has not yet been successful. All of the debts set forth in the SOR still remain outstanding. 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.: Against the Applicant.

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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