



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-07823
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 23, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on August 6, 2009. (Government Exhibit 1.) On July 8, 2010, 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 on July 28, 2010, notarized on August 4, 2010, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 30, 2010. A notice of hearing was issued on October 14, 2010, and the hearing was scheduled for November 4, 2010. At the hearing the Government presented seven exhibits, referred to as Government Exhibits 1 through 7. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I. She also testified on her own behalf. The record remained open until close of business on November 18, 2010, to allow the Applicant the opportunity to

submit additional documentation. The Applicant submitted eight Post-Hearing Exhibits which were admitted without objection, as Applicant's Post-Hearing Exhibits 1 through 8. The official transcript (Tr.) was received on November 16, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 25 years old and is a single parent. She has a high school diploma and is currently enrolled in college courses. She is employed with a defense contractor as an Administrative Assistant and is seeking to obtain a security clearance in connection with this 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.

At the age of eighteen, the Applicant was in a relationship, became pregnant and had a son. She soon learned that her boyfriend was cheating on her and they separated. As a single parent at the age of nineteen, without help from her parents, she was solely responsible for her and her son's financial support. For the next four years, she and her son's father had an off and on relationship before they permanently broke up. The Applicant was left with all of the debt, including credit cards used to help raise their son and car payments, as everything was put in her name. Although she worked, it was financially difficult for her. She earned \$10.00 an hour that paid for rent, food and clothing for her and her child. In 2007, her car was voluntarily repossessed because she could not afford to make the payments. Credit Reports of the Applicant dated September 5, 2009; April 6, 2010; September 20, 2010; and November 3, 2010, reflect that the Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$18,000.00. (Government Exhibits 2, 3, 5 and 7.)

In March 2008, the Applicant began working for her current employer and her income has significantly increased. Since then, she has been working to clean up her credit. She contacted her bank for advice. (Tr. p. 51.) She has completely paid off two of her debts, and has set up payment plans with the other creditors that she is following to pay off the other two. Allegations 1(a), A debt owed to a creditor in the amount of \$683.00 has been paid (Applicant's Exhibits A and H); 1(b), A debt owed to a creditor in the amount of \$9,603.00 is being paid through regular monthly payments of \$173.00 since August 2010 (Applicant's Exhibits B and I and Tr. p. 52); 1(c), A debt owed to a creditor in the amount of \$1,399.00 has been paid in full (Applicant's Exhibits C and H and Tr. p. 52); 1(d), A debt owed to a creditor in the amount of \$8,675.00 is being paid

through regular monthly payments of \$100.00. (Applicant's Exhibit D and Applicant's Post-Hearing Exhibits 1 and 2.) There were other delinquent debts that the Applicant has resolved that were not alleged in the SOR. (Applicant's Exhibit F.)

Applicant's most recent financial statement indicates that after paying her monthly expenses and her delinquent debts, she has a net remainder of \$259.00. Her take home salary is approximately \$2,200.00 monthly. Her monthly expenses have been reduced. She now lives in a mobile home and her rent is \$400.00 monthly. Her car payment and insurance is \$280.00, monthly and day care is \$200.00 monthly. She is current with all of her other monthly expenses. (Tr. p. 55.) She also has about \$5,000 or \$6,000 in her 401(k). (Applicant's Post-Hearing Exhibit 1.)

Letters of recommendation from the Applicant's professional colleagues and friends including managers and coworkers attest to her most professional, organized, conscientious and responsible nature. She provides administrative support to five managers. Her dedication to her work is evident in everything she does. She completes all of her tasks in a timely fashion and is considered a valuable asset to the organization. (Applicant's Exhibit E and Applicant's Post-Hearing Exhibits 3, 4, 5, 6, 7 and 8.) The Applicant is presently attending college to further her education and enhance her opportunities. (Applicant's Exhibit G.)

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 obligation.

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;

20.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 and surrounding circumstances;

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.”

CONCLUSIONS

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 him or 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 evidence shows that circumstances largely beyond the Applicant’s control, namely, underemployment, and the expenses of being a single parent, caused her financial difficulties. Since gaining more suitable employment, she has been working hard to resolve her delinquent debts and restore her good credit standing. She has paid off two of the delinquent debts and is following a payment plan agreement with the creditors to resolve the other two. She has demonstrated integrity and responsibility. She has supported herself and her son, who is now six years old, without financial assistance from anyone. In fact, under the circumstances, she has done as much as is humanly possible to resolve her financial problems.

Under the particular circumstance of this case, the Applicant has made a good faith effort to resolve her past due indebtedness. She does not plan on incurring any new debt. She understands the importance of paying her bills on time and living within her means. She also knows that she must remain fiscally responsible in the future. There is evidence of financial rehabilitation. The Applicant has demonstrated that she can properly handle her financial affairs and that she is fiscally responsible. Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; and 19.(c) *a history of not meeting financial obligation* apply. However, Mitigating Conditions 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*; 20.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*; and 20.(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* also apply. Accordingly, I find for 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 above, when viewed under all of the guidelines as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented, including the Applicant's favorable recommendations and work history. They mitigate the negative effects of her financial indebtedness and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for 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: For the Applicant.
Subpara. 1.a.: For the Applicant.
Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.
Subpara. 1.d.: For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge