



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-01463

Appearances

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

March 14, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Questionnaire for Sensitive Positions (SF-86) on June 20, 2008. (Government Exhibit 1.) On a date uncertain, 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 August 24, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 26, 2011. A notice of hearing was issued that same day, and the hearing was scheduled for February 18, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8. The Applicant presented one exhibit, referred to as Applicant's Exhibit A. He also testified on his own behalf. The record remained open until close of business on March 10, 2011, to allow the Applicant the opportunity to submit additional documentation. The Applicant

submitted two Post-Hearing Exhibits, consisting of five pages, which were admitted without objection, as Applicant's Post-Hearing Exhibits A through D that included in the record. The official transcript (Tr.) was received on February 25, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 33 years old and married with two children. She has a Bachelors of Science degree in Chemistry. She was employed as by a defense contractor in their Forensic Laboratory Program. She is subject to being rehired, 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 each of the six delinquent debts set forth in the SOR totaling approximately \$190,000.00. Credit Reports of the Applicant dated July 19, 2008; October 22, 2009; June 4, 2010; October 12, 2010; and February 13, 2011, also reflect that the Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 4, 5, 6, 7 and 8.)

The Applicant was deployed to Iraq on a job assignment from July 2008 to July 2009. She took the position to assist her financial recovery as portions of her pay were tax-free. (Tr. p. 33.) She testified that she has since paid off an auto loan, a credit card account, saved money to purchase a car outright, and paid off her husband's carpet cleaning and restoration equipment. (Tr. p. 30-31.) Although her financial problems began in 2003, until the beginning of 2008, the Applicant always paid her bills on time.

She explained that in 2003, she purchased a home for \$ 402,000 and wanted to sell it in 2005. Before the house could be sold, and after she had already purchased another home for \$ 635,000, she learned that there were unforeseen, necessary, costly repairs that had to be done, specifically structural foundation problems and termite damage that needed repair. To sell the first house she had to re-roof the front section of the house, address grade and drainage issues, replace counter tops and carpeting and repaint the interior and exterior. The total costs of repairs was \$7,000.00.

During this time, the Applicant continued making the mortgage payments on both the first and second houses. She used her savings to cover the costs. It took one year to sell the first house and she spent \$ 70,000 and had a total loss of almost \$100,000

from the initial appraised value. Her initial plan to have the profit from the first home pay off the second mortgage on the second home was not realized. There was no net profit from the sale of the house, which made the second house unaffordable. The Applicant sold the second house for what she bought it for and then purchased a third house for \$495,000. Since September 2009, she has been working on obtaining a loan modification that will adjust her payment of \$ 3,600.00 to \$ 1,870.00. (Tr. p. 42.) She is no longer making her mortgage payments. In the event that she does not get the loan modification, she will be forced to move from the house and plans to file Bankruptcy to discharge her debts. (Tr. p. 55.) The decrease in the economy also adversely affected her husbands carpet cleaning business.

She has recently retained an attorney to assist in loan modification assistance and hired a credit counseling company to help with the debt repayment of credit card accounts. The goal is to reduce her overall indebtedness. She states that her attorney advised her to focus on her primary mortgage prior to resolving her other delinquencies. She has paid off equipment for her husband's business, a credit card account and an auto loan. She is continuing to pay work toward resolving her debts.

The Applicant has made no payments toward any of the debts in the SOR and each of the debts remains owing. A debt owed to a bank for a delinquent credit card account in the amount of \$ 2,413.00 remains owing. (Tr. p. 54.) A debt owed to bank for a delinquent credit card account in the amount of \$ 27,901.00 remains owing. A debt owed to a bank for a delinquent credit card account in the amount of \$ 8,569.00 remains owing. A debt owed to bank for a mortgage account that is more than 120 days past due in the amount of \$ 34,941.00 remains owing. A debt owed to a bank for the second mortgage on the house she currently lives in is past due in the amount of \$ 90,849.00. A debt owed to a bank for a delinquent credit card account in the amount of \$15,501.00 remains owing. If the loan modification is approved, she will have sufficient monies to pay these debts and she plans to. In the event that she does not get the loan modification on her mortgage, she plans to file bankruptcy and discharge each of the debts set forth in the SOR. (Tr. p. 60.)

The Applicant received a Certificate of Appreciation dated December 18, 2009, for her work with the defense contractor in Iraq. (Applicant's Post-Hearing Exhibit A.)

Applicant's performance review for her current job dated January 24, 2011, is favorable. (Applicant's Post-Hearing Exhibit B.)

A letter of recommendation from the a representative from the Department of the Army who worked with the Applicant in Iraq indicates that the Applicant's highly specialized skill set is critical to the government's expansion forensic capabilities. He states that, "It is a rare individual indeed that can serve and excel in these extreme conditions". The Applicant is further described as having a "dedicated work ethic, and positive attitude even while in the dangerous Iraqi theater of operations which was an inspiration for all" . (Applicant's Post-Hearing Exhibit D.)

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:

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 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 her control, namely the downturn in the economy primarily caused her delinquent indebtedness. Her husbands struggling business, and by purchasing houses she could not really afford, the Applicant simply got to deep over her head. Although for the most part she made the payments on time, each time she down sized and purchased a less expensive house, she continued to have financial trouble. She was forced to deplete her savings and live off credit cards to pay for unanticipated house repairs and to cover the mortgage payments. In regard to her current house, the third house, she is hoping to obtain a loan modification on her mortgage that will enable her to pay her bills and resolve her delinquent debts. In the event that she does not get the modification, she will file bankruptcy. She has also hired an attorney to assist her in resolving her debts. At the present time, however, all of her delinquent debts remain owing. Given the extent of his indebtedness, and the fact that she has not yet started the process to resolve these debts, she presently does not qualify for access to classified information. Although arguably Mitigating Condition 19(b) could apply because the Applicant acted responsibly in some circumstances, it is not controlling in this case. The Applicant remains excessively indebted.

Under the particular circumstances of this case, the Applicant's delinquent debts remain owing and have not yet been addressed. There is insufficient evidence of financial rehabilitation at this time. The Applicant has not clearly demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. Considering all of the evidence, the Applicant has not 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 obligations* apply. None of the mitigating conditions are applicable. 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 above, when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, lack of candor, 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. However, it does not 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 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 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.

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