



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ----- ) ISCR Case No. 10-03035  
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 Applicant for Security Clearance )

Appearances

For Government: Alison O’Connell, Department Counsel  
For Applicant: *Pro se*

March 14, 2011

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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 January 20, 2010. (Government Exhibit 5.) On September 21, 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 in writing on October 22, 2010, 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 December 10, 2010. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant failed to submit a reply to the FORM. This case was assigned to the undersigned on March 3, 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 23 years old, unmarried, and has an Associates Degree. She is employed as an Aircraft Mechanic by a defense contractor 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 three of the four debts set forth in the SOR, specifically allegations 1(a), 1(c) and 1(d), totaling in excess of \$24,000.00. Credit Reports of the Applicant dated August 26, 2010; May 10, 2010; and February 3, 2010; reflect that the Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 8, 9 and 10.)

In August 2005, the Applicant started attending college and took out student loans to finance her education. At some point, she took six months off from school. During that time, she states that she was under the mistaken impression that her student loans were being deferred, when in fact they were in default. The Applicant states that she tried to set up a payment plan with the collection agency assigned to handle the account, but they were unreceptive to her proposals. She claims that in 2009, she made two payments toward the debt totaling \$780.00. There is no evidence of these payments.

She denies the debt set forth in allegation 1(b), because she believes the Veteran's Administration is responsible for the debt since the father of her baby is a Veteran. It appears that the Applicant believes the debt is for medical expenses for her baby. However, the Applicant's credit report dated February 3, 2010, shows that the debt dates back to at least July 2006, more than three years before the Applicant gave birth to her child. (Government Exhibit 10.) Thus, there is no legitimate basis to dispute this debt.

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 Sallie Mae for a student loan in the amount of \$23,665.00 remains owing. A debt owed to BC Services for a medical account in the amount of \$782.00 remains owing. A debt owed to a GLA Collection in the amount of \$43.00 remains owing. A debt owed to NCO Financial in the amount of \$325.00 remains owing.

The Applicant states that she has been working on paying other bills and has not gotten around to resolving the debts listed in the SOR. (Government Exhibit 4.) In

regard to the debts listed in the SOR, she states that the collection agencies involved want payment in full and she has to support her family that includes her child and fiancé. Her response as to what she has done to resolve the delinquent debt in the SOR was, "Have not done anything to resolve the issue due to lack of knowledge, but will get to it as I am just making it day by day." (Government Exhibit 6.)

Applicant's financial statement dated June 24, 2010, indicates that after her monthly household expenses are paid, she has approximately \$1,120.00 left at the end of the month. Although she indicates what the monthly payments are, and when they are due for each of the creditors listed in the SOR, she is not paying them. (Government Exhibit 6.)

## **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 predicted 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 his security clearance eligibility.

The evidence shows that the Applicant is indebted to at least four creditors totaling in excess of \$24,000.00. She states that she had not been able to resolve the debts because she has been paying other bills. However, she has failed to present evidence of any bill payment or any other evidence in mitigation. 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. Mitigating Condition 19(b) does not apply because the Applicant has not acted responsibly under the circumstances.

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.

### **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