



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 10-04219
)
)
Applicant for Security Clearance)

Appearances

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

October 21, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on January 7, 2008. (Government Exhibit 1.) On February 28, 2011, 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 April 5, 2011, and she requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 5, 2011. A notice of hearing was issued on July 8, 2011, and the hearing was scheduled for August 11, 2011. At the hearing the Government presented ten exhibits, referred to as Government Exhibits 1 through 10, which were admitted without objection. The Applicant presented five exhibits, referred to as Applicant's Exhibits A through E, which were also admitted without objection. She also testified on her own behalf. The official transcript (Tr.) was received on August 25,

2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 38 years old and has four children. She has completed the eleventh grade. She is employed with a defense contractor as an Information Technician 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.

The Applicant denied each of the allegations set forth in the SOR, except 1(f). Credit Reports of the Applicant dated February 9, 2008; March 4, 2009; March 25, 2009; November 8, 2010, and August 20, 2011, reflect that the Applicant is indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$33,000. (Government Exhibits 2, 3, 4, 5 and 10.)

In January 2008, the Applicant began working for her current employer as a temporary employee. She was hired permanently in March 2008. Prior to 2008, the Applicant was for the most part unemployed, as she had a son in 2004, and a daughter in 2006. In total, she has four children, two from one relationship and two from another. In 2000, the Applicant divorced her husband with whom she had her two eldest children. The divorce left her with no alimony or child support even though her husband was ordered by the court to pay these to her. The court also ordered that her husband provide health insurance for his two children. (Applicant's Exhibit B and Tr. p. 38.)

In September 2010, the Applicant separated from her boyfriend of nine years, with whom she has her two younger children. She is now the sole supporter of all four minor children, three of whom currently reside with her, the other resides with his father. The Applicant simply was not earning sufficient income to keep up with her financial obligations.

The Applicant became indebted to the following creditors. She states that when she received information from the Department of Defense, she first learned of her indebtedness. She states that at that time, she started working to resolve her debts. She claims that she has paid off several delinquent debts that are not alleged in the SOR. (Government Exhibit 7.) In regard to the debts listed in the SOR: 1(a). She has paid \$200.00 toward a debt owed to a creditor for a medical bill in the amount of

\$438.00. (Applicant's Exhibit A.) 1(b). Another debt owed to a creditor in the amount of \$438.00 remains outstanding. (Tr. p. 53.) 1(c). The Applicant further claims that because the father of her children was legally obligated to provide for the children's medical insurance, she is not responsible for the judgment that was entered against her for their medical expenses owed to a creditor in the amount of \$29,350. She also claims that she was never properly served in this legal matter. (Tr. p. 54.) 1(d). She states that she contacted a creditor concerning a debt owed in the amount of \$976.00 but they could not identify the debt with the information she provided. (Tr. p. 58.) 1(e). The Applicant cannot recall a debt owed to a creditor in the amount of \$658.00 nor does she have any evidence to show that she has paid it. (Tr. pp. 59-60.) She believes it may have been paid as it is no longer reflected on her credit report. (Tr. P. 60.) 1(f). The Applicant has settled a debt owed to a creditor in the amount of \$242.00. (Applicant's Exhibit C.) 1(g). The Applicant states that she contacted a creditor concerning a debt owed in the amount of \$901.00 and was told that she is not in their accounting system. (Tr. p. 61.) The Applicant failed to provide any documentary evidence to support her testimony concerning any of her contacts with her creditors.

Applicant's personal financial statement dated August 17, 2011, reflects that after paying her regular monthly expenses, without addressing any delinquent debts, she has \$629.00 left at the end of the month. (Applicant's Exhibit D.) She currently earns approximately \$40,000 annually. (Applicant's Exhibit E.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance determination because she intentionally falsified material aspects of her personal background during the security clearance process.

The Applicant denies each of the allegations set forth in the SOR under this guideline. (See, Applicant's Answer to SOR.) The Applicant completed a security clearance application dated January 7, 2008. (Government Exhibit 1.) Question 27(d) of the application asked the Applicant, "In the last seven years, have you had any judgments against you that have not been paid?" The Applicant answered, "NO." (Government Exhibit 1.) The Applicant failed to disclose the judgment set forth in subparagraph 1(c) of the SOR. (Government Exhibit 8.)

Question 28.(a) of the application asked the Applicant, "In the last seven years, have you been over 180 days delinquent on any debts? The Applicant answered, "YES." (Government Exhibit 1.) However, she failed to disclose those debts set forth in 1(a) through 1(f) of the SOR. (Government Exhibits 2, 3 , 4, 5 and 10.)

Question 28.(b) of the same application asked the Applicant, "Are you currently over 90 days delinquent on any debts? The Applicant answered, "YES." (Government Exhibit 1.) However, she failed to disclose those debts set forth in 1(a) through 1(f) of the SOR. (Government Exhibits 2, 3, 4, 5 and 10.)

Question 29 of the same application asked the Applicant, "In the last seven years, have you been a party to any public record civil court actions not listed elsewhere on this form?" The Applicant answered, "NO." (Government Exhibit 1.) She failed to disclose the judgment set forth in subparagraph 1(c) of the SOR. (Government Exhibit 8.)

The Applicant explained that in response to each of the questions on the security clearance application concerning her finances, it was never her intention to lie, be deceitful or corrupt the investigation process in anyway. She states that she answered the questions to the best of her knowledge at the time. In hindsight, she realizes that she should have reviewed her credit report and finances before filling out the questionnaire. Once the accounts were brought to her attention, she states that she started working to resolve them. (Applicant's Answer to SOR.)

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; and

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;

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Condition that could raise a security concern:

None.

Condition that could mitigate a security concern:

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 and personal conduct, 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, periods of unemployment, a divorce, having to support four children on her own without alimony or child support, followed by another separation from her significant other in 2010, caused her financial difficulties. Since March 2008, she has worked full time. She states that since then she has been working to resolve her debt. She states that she is now planning to file bankruptcy to discharge her debts, but she does not plan to include her judgment as she believes her ex-boyfriend and the father of two of her

children is responsible for the debt as he carried the medical insurance for the children.

Under the particular circumstances of this case, the Applicant has not met her burden of proving that she is worthy of a security clearance. She does not have a concrete understanding of her financial responsibilities and has not sufficiently addressed her delinquent debts in the SOR. Thus, it cannot be said that she has made a good-faith effort to resolve her past due indebtedness. She has not shown that she is or has been reasonably, responsibly or prudently addressing her financial situation. She obviously does not understand the importance of paying her bills on time. At this time, there is insufficient evidence of financial rehabilitation. The Applicant has not demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. Her largest debt, a judgment entered against her, remains owing and is significant. Assuming that she follows through with her bankruptcy and discharges her debts, and then shows that she does not acquire new debt that she is unable to pay, she may be eligible for a security clearance in the future. 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. Although 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*, applies, it is not controlling. Although she has paid a small amount toward several debts, her largest debt remain owing and she remains excessively indebted. Thus, she has not done enough to show that she is fiscally responsible. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

Under Guideline E, the Applicant did not deliberately conceal material information from the Government on her security clearance application concerning her delinquent debts. Her testimony regarding this issue was credible and believable under the circumstances. Admittedly, she was careless in answering the questions, but she was not deceitful. At the time she answered the questions, she was not aware of the extent of her indebtedness. She knew that she had some debt, but she did not know the particulars. She now realizes the importance associated with the security clearance application; and indicates that in the future when she completes it, she will first obtain her credit report as a source of reference and be as accurate as possible. Accordingly, I find for the Applicant under Guideline E (Personal Conduct.)

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, a 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. 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.
Subpara. 1.g.: Against the Applicant.

Paragraph 2: For the Applicant.
Subpara. 2.a.: For the Applicant.
Subpara. 2.b.: For the Applicant.
Subpara. 2.c.: For the Applicant.
Subpara. 2.d.: For 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

