



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-06354
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Jesse G. Quinsaas, Attorney At Law

May 16, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on April 15, 2010. (Government Exhibit 1.) On October 19, 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 November 5, 2010, and she requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 4, 2011. A notice of hearing was issued on January 13, 2011, and the hearing was scheduled for February 16, 2011. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6 that were admitted without objection. The Applicant called one witness and presented nine exhibits, referred to as Applicant's Exhibits A through I that were admitted without objection. She also testified on her own behalf. The Applicant

requested that the record remain open to submit additional documentation. The record remained open until close of business on March 2, 2011. The Applicant submitted one Post-Hearing Exhibit consisting of five pages, referred to as Applicant's Post-Hearing Exhibit A. The official transcript (Tr.) was received on February 23, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 45 years old and married with three children. She is employed as a Receptionist with 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 that she was indebted to the respective lenders for three delinquent loans on real property that are set forth in the SOR. Credit Reports of the Applicant dated August 21, 2010; April 24, 2010; and February 13, 2011, collectively reflect that the Applicant was indebted to these creditors. (Government Exhibits 4, 5 and 6.)

In 2005, the Applicant and her husband entered into a purchase agreement to buy a house for her husband's brother, his wife and their son. At the time, their family members were gainfully employed, but they did not have the down payment or the credit to buy the house on their own. To assist them with the purchase of the house, the Applicant and her husband qualified for the loan and put it in their name. The Applicant's in-laws were to live in the house and make the mortgage payments. For four years, the Applicant's in-laws made the house payments without problems. In 2007, the loan was refinanced. In about July or August 2009, the in-laws decided they could no longer afford the house. In an effort to save her credit, the Applicant applied for a loan modification, but was unsuccessful.

The Applicant was indebted to two lending institutions for the first and second mortgages on the property. The house was eventually placed for short sale and the process was finalized in October 2009. (Tr. p. 37.) The mortgage loans for this property set forth in allegations 1(b) and 1(c) of the SOR have been settled. See, letter from lender referencing loan No. 567020988 that has been paid in full. (Applicant's Exhibit A.) See, a Form 1099 C from a lender which indicates that the loan No. 22435480 has been cancelled. (Applicant's Exhibit B.) See, letter from lender indicating that the loan

for loan No. 22435480 may be cancelled for less than full value. (Applicant's Exhibit C.) Furthermore, Applicant's credit report dated February 1, 2011, reflects that the loans have been settled. (Applicant's Exhibit D, pp. 7 and 8.)

In July 2005, the Applicant and her husband purchased another investment house, in conjunction with her husband's other brother. Both parties contributed 50% to the purchase price and they divided the expenses equally. The purchase price for the house was \$288,000. They put a down payment of \$30,000. The loan was financed through one lender and sold to a bank. The payments were \$1,645.00 monthly. (Applicant's Exhibit E.) The loan was an interest only loan for five years, and they intended to sell the property after four years. At that time, all the parties felt that buying the house was a good deal. The first year, the house was used as a vacation home for the family. After that, they rented it to help cover the cost of the monthly mortgage payments. By 2009, the real estate market had plummeted, the market price of the house had fallen considerably, and it was difficult to find tenants that would pay the rent. The Applicant hired a rental management company to help find a suitable tenant, but problems continued. The tenants stopped paying the rent, vandalized the house, and the Applicant was forced to evict them. The Applicant cleaned and repaired the house for new tenants. Her in-laws decided that they could no longer afford to help pay the mortgage.

In an effort to save the house and her credit, the Applicant applied for a loan modification, but was unsuccessful. She then hired a realtor and arranged for a short sale. There was an all cash buyer, willing to pay \$104,000 for the property, but the bank failed to approve the short sale and the property was eventually foreclosed upon. The property is currently listed for \$94,500.00.

At one point, the mortgage was past due in the amount of \$21,941.00. The total loan balance owed on the loan was \$260,000. The mortgage loan for this property is set forth in allegation 1(a) of the SOR. Applicant has submitted a copy of a Form 1099-A from the lender. (Applicant's Post-Hearing Exhibit A.) Box 4 of the Form indicates that the fair market value of the property as stated by the lender is \$285,072.18. Applicant argues that this establishes that there is no deficiency amount potentially owed to the lender on the property since the lenders have indicated the fair market value is greater than the amount owed. If the fair market value is less and the debt is cancelled, the debtor may have cancellation of debt income. In this case, there is no taxable income. (See, Applicant's Post-Hearing Exhibit A.) The Government has submitted no evidence to the contrary.

In 2008, the Applicant's husband retired from the Navy and their monthly income decreased. The Applicant no longer has the obligation of paying either mortgage on the investment properties. The Applicant has set up a monthly budget that she is following, and she is current with all of her other financial obligations. (Applicant's Exhibit G.) Her current credit rating is relatively high. (Applicant's Exhibit D.) She lives within her means, is current with the mortgage on her personal residence, and has no intention of

investing in any other real estate, or purchasing property with family members in the future. (Tr. p. 58.)

Applicant's supervisor for the past eight years testified that Applicant's work product is excellent, she is honest, trustworthy and loyal. If at any time she observes someone violating company policy, she reports it. (Tr. pp. 83-90)

A letter of recommendation from a Major on active duty in the Marine Corps indicates that he has interacted with the Applicant in a professional capacity at work and considers her trustworthy and reliable. (Applicant's Exhibit H.)

A letter from the real estate agent who was retained to attempt to short sell the Applicant's property describes the great lengths the Applicant went to in order to prevent foreclosure. (Applicant's Exhibit F.)

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;

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.

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, a drastic downturn in the real estate market, coupled with poor decisions to cosign on a mortgage loan for relatives and invest in real property with them, caused her financial indebtedness. The problems that surfaced were completely unforeseeable, isolated and will not recur. First and foremost, the Applicant has learned never to engage in any real estate transactions with family members. Secondly, throughout the process, she was extremely diligent in doing her part to prevent foreclosure. When the Applicant learned that her relatives could no longer afford the mortgage, she tried to get the loan modified, and when she could not, she hired a realtor to sell the house. She put in considerable effort to sell the property through short sale. The Applicant acted responsibly and with integrity under the circumstances. In regard to the foreclosed property, the Applicant did everything she possibly could to avoid foreclosure on the property. She tried to short sale the property but the bank did not want to negotiate. She did the best she could 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 has a stellar record demonstrating that she has always paid her bills on time. But for her short sale and foreclosure, her record is unblemished. She understands the importance of paying her

bills on time and living within her means. She also knows that he must remain fiscally responsible in the future. There is sufficient 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 testimony, recommendations, and dedicated 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.

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