



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-08075

Appearances

For Government: Melvin A. Howry, Department Counsel

For Applicant: Sarah Kneisel, Attorney At Law

February 29, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) dated May 26, 2010. (Government Exhibit 1.) On July 19, 2011, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR on August 31, 2011, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on November 30, 2011. A notice of hearing was issued on December 7, 2011, scheduling the hearing for January 18, 2012. The Government presented seven exhibits, referred to Government Exhibits 1 to 7, which were admitted without objection. The Applicant called one witness to testify and

presented fifteen exhibits, referred to as Applicant's Exhibits A through O, which were admitted without objection. The Applicant also testified on her own behalf. The record remained open until February 9, 2012, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits AA through DD, which were admitted without objection. The official transcript (Tr.) was received on January 24, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 51 years old, and has a Associate of Arts Degree. She is employed by a defense contractor as a Graphic Artist 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because she is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant denies each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated June 16, 2010; May 4, 2011; and January 11, 2012, collectively reflect that she owes each of the delinquent debts set forth in the SOR totaling in excess of \$35,000. (Government Exhibits 2, 5 and 7.) The Applicant has worked for in the defense industry and for her current employer for the past twenty-six years.

Prior to 2001, the Applicant had excellent credit and paid her bills on time. In 1993, she had twin daughters. Since then, the Applicant has always been the sole wage earner for her daughters and their father. The Applicant was not used to budgeting for a family, and used credit cards to purchased things that she could not afford. To resolve her indebtedness, in May 2001, the Applicant filed for Chapter 7 Bankruptcy. Her debts were discharged in September 2001. Following the bankruptcy, she stopped using credit cards as much and was able to keep up with her payments.

In January 2004, the Applicant moved to a better neighborhood to raise her daughters and to be closer to family members. She learned that she could buy a house and her mortgage payment would be less than her rent was in the city. The only problem would be the long commuting distance of 106 miles each way to work. She

decided that she could commute to work by bus. The bus caused motion sickness that she had not expected and she was forced to drive. In 2006, her expenses skyrocketed because gas prices increased from \$3.50 a gallon to \$5.00 a gallon and the wear and tear on her car was expensive. This continued until 2008. She would borrow money from her 401(K) to cover the difference in cost. As a result she acquired a tax liability.

The bad economy, the rise in the cost of gas, food, utilities and not being able to work overtime caused her financial distress. As a result, the following debts became delinquent. A judgment owed to a creditor in the amount of \$5,958.00 was delinquent and owing. The Applicant has been making payments of \$500.00 a month and now owes about \$3,000. (Tr. p. 48) A debt owed to a creditor in the amount of \$270.00 was delinquent and owing. The debt was included in the Chapter 13 bankruptcy discussed below. (Tr. p. 48.) A debt owed to a creditor in the amount of \$75.00 was delinquent and owing. The Applicant has paid off the debt. (Tr. p. 48.) A debt owed to a creditor in the amount of \$102.00 was delinquent and owing. The debt is included in the Chapter 13. (Tr. p. 49.) A debt owed to a creditor in the amount of \$964.00 was delinquent and owing. The debt is included in the Chapter 13. (Tr. p. 49.) A debt owed to a creditor in the amount of \$840.00 was delinquent and owing. The debt is included in the Chapter 13. (Tr. p. 49.) A debt owed to a creditor in the amount of \$2,184.00 was delinquent and owing. The debt is included in the Chapter 13. (Tr. p. 49.) A debt owed to a creditor in the amount of \$4,418.00 was delinquent and owing. The Applicant modified her home loan and is current on her monthly payments of \$767.00. (Tr. p.p. 49 - 50, and Applicant's Exhibits K and L.) A debt owed to a creditor in the amount of \$45.00 was delinquent and owing. The Applicant paid off the debt. (Tr. p. 51.) A debt owed to a creditor in the amount of \$283.00 was delinquent and owing. (Tr. p. 51.) The debt is included in the Chapter 13.

After modifying her home loan the Applicant realized that she still could not pay off all of her debts. In order to resolve them, she filed for Chapter 13 bankruptcy relief in October 2011. (Applicant's Exhibit A.) Instead of discharging her debt, she wanted to pay off her debt. She is currently paying \$371.00 monthly to the bankruptcy trustee that is going toward her delinquent debt. The amount may increase in the future, and she is prepared to pay the increased amount. Applicant's Post-Hearing Exhibits AA and DD sets forth the recently approved repayment plan. She is scheduled to pay \$371.00 for two months; \$486.00 for 53 months; and \$646.00 for four months to resolve her delinquent debt.

Since filing for bankruptcy, the Applicant has completed credit counseling. (See Applicant's Post-Hearing Exhibits BB, and CC, and Applicant's Exhibit F.) She has also adopted a number of cost saving measures. (Applicant's Exhibit M.) She now has a budget and is living within her means. She lives frugally. She is riding to work in the commuter van and sits in front so she does not get sick. She is not using credit cards, she shops at discount grocery stores, she is using her clothes line to reduce the utility bills and she sets the thermostat at 60. She is now able to save several hundred dollars a month. (Tr. p. 86.)

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because she engaged in conduct which shows dishonesty, questionable judgment, unreliability and/or untrustworthiness.

The Government alleges that from 1993 to 2009, the Applicant committed tax fraud by claiming unauthorized child care exemptions and charitable donations to which she was not entitled to avoid paying taxes. The Applicant admits to claiming the deductions for 1996 to 2000, but not in 1993, 1994 or 1995. She admits that she made a mistake and has been in contact with her tax preparer to amend the tax returns and correct the situation. (Applicant's Exhibit N and Tr. p. 55.) A letter from the Applicant's tax preparer indicates that there is a perceived misunderstanding about the child care exemptions that were claimed by the Applicant. The tax preparer states that under IRS guidelines, the child care provider must be reported on form 2441 of the 1040 form, which it was. There is no requirement that a child care provider be licensed in order to claim the exemption. (Applicant's Exhibit N.) During those years, the Applicant's mother watched her two children while the Applicant was at work, and the Applicant paid her mother \$450.00 monthly to do so. (Tr. p. 57.) Accordingly, based upon this information that has not been contradicted by the Government, I find for the Applicant with respect to SOR allegation 1(a).

From June 20, 2009, to June 27, 2009, the Applicant was suspended from work for violating her company's labor reporting policies. As a result, she was placed on probation for one year. She explained that her supervisor gave her permission to take work home, and so she did. When she reported to work, it was not always during the hours she was supposed to, but she always made up the time. (Tr. p. 61.) She would swipe out of the company and not swipe back in until the next day. However, her time card would say something different. She also did not take her lunches. As a result of this violation, for one year the Applicant was not allowed to take work home. After her probation was up, she was once again able to take work home. (Tr. p. 83.)

In December 2009, another government agency revoked her program access due to her financial consideration and personal conduct as they related to her admitted tax fraud and time card fraud.

The Applicant's sister testified that the Applicant is a level-headed individual who is honest, reliable, and truthful, and who has learned from her mistakes. (Tr. pp. 30 - 33.)

Letters of recommendation from the Applicant's sister as well as a past supervisor, senior managers, and coworkers, who have known and worked with the Applicant for many years, attest to her talent ability, reliability, honesty, loyalty, conscientious nature, generous attitude, ethical disposition, sensitivity, and hardworking nature. She is recommended for a security clearance. (Applicant's Exhibit G.)

The Applicant received an award of achievement for successfully completing "7 Habits of Highly Effective People," April 12-20, 2011. (Applicant's Exhibit I.)

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts;

19.(c) a history of not meeting financial obligations.

Conditions that could mitigate security concerns:

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.

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:

16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and

regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Conditions that could mitigate security concerns:

17.(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

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;
- 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 behavioral 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, a security clearance 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 such access may be involved in instances of financial irresponsibility and misconduct, 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 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), and that she engaged in rule violations indicative of poor personal conduct (Guideline E). 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.

In 2001, the Applicant lived beyond her means and was forced to file for Chapter 7 Bankruptcy and discharge her debts. Just four months ago, the Applicant filed for Chapter 13 bankruptcy in order to work toward resolving her indebtedness. Hopefully, this time she has learned from her mistakes and will not have to resort to bankruptcy again. She seems to understand her mistakes and has adopted some cost saving measures to ensure that it does happen again. However, at the present time, she remains excessively indebted. She has just started her Chapter 13 repayment plan. She will need to follow the plan for an extended period of time to ensure the Government that she can demonstrate financial responsibility. She currently falls short of that. She has not presented sufficient evidence to demonstrate a track record of financial responsibility and has not yet resolved her financial indebtedness.

There is insufficient evidence of financial rehabilitation at this time. 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.(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, they are not controlling. The Applicant has recently started to resolve her indebtedness. She has indeed made a good faith effort to repay her overdue creditors or otherwise resolve her debts, and she is commended for doing so. However, she must follow through for some extended time to show that she can resolve her debts before she can become eligible for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

Furthermore, with respect to Guideline E, the Applicant engaged in poor personal conduct that reflects negatively on her ability to be trusted with the national secrets. The Applicant's pattern of misconduct involving rule violations, by claiming unauthorized charitable donations on her tax returns in order to avoid taxes and by violating her company's labor reporting policies, committing time card fraud, and by having her program access revoked just two and a half years ago, demonstrates poor judgment, unreliability and untrustworthiness. The Applicant acknowledges her mistakes, and indicates that she has changed her ways. She is commended for this, but at this point, more time in rehabilitation is necessary to convince the Government that she can be trusted. Under the particular circumstances of this case, the Applicant falls short of this requirement at this time. The Applicant may reapply in one year and by then, assuming she follows her intentions, her financial situation will vastly improve, and her past misconduct will be in the distant past. This will improve her opportunities to meet the eligibility requirements for access to classified information.

Disqualifying Condition 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information* applies. Mitigating Condition 17.(d) *the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur* also applies, but is not controlling in this case. The fact that the Applicant, with her level of experience and expertise working for the defense department, engaged in this type of misconduct is indicative of a need for further rehabilitation.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information, including her favorable letters of recommendation and the testimony from her sister. However, under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement,

untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

On balance, it is concluded that the Applicant has failed to 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 Paragraphs 1 and 2 of the Government's Statement of Reasons.

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.: For 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.
- Subpara. 1.h.: Against the Applicant.
- Subpara. 1.i.: Against the Applicant.
- Subpara. 1.j.: Against the Applicant.
- Subpara. 1.k.: Against the Applicant.
- Subpara. 1.l.: Against the Applicant.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against the Applicant.
- Subpara. 2.c.: Against the Applicant.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge

