



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-08172

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Eric L. Webb, Attorney At Law

September 29, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on January 5, 2009. (Government Exhibit 1.) On January 17, 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 May 15, 2011, and she requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 20, 2011. A notice of hearing was issued on July 5, 2011, and the hearing was scheduled for August 15, 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 seven exhibits, referred to as Applicant's Exhibits A through G 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 September 1, 2011. The Applicant submitted two Post-Hearing Exhibit consisting of thirty-six pages, referred to as Applicant's Post-Hearing Exhibits A and B. The official transcript (Tr.) was received on August 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 52 years old and divorced with two adult children. She is employed as an Interpreter 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 each of the eighteen creditors set forth in the SOR totaling approximately \$53,000.00. Credit Reports of the Applicant dated February 9, 2010; August 11, 2010; and December 17, 2009, collectively reflect that the Applicant was indebted to these creditors. (Government Exhibits 3, 4 and 5.)

The Applicant was born in Afghanistan in 1958. She speaks four different languages including Pasto, Dari, Farsi and English. She and her husband separated in 1998, and she supported her two children without his assistance. Although she worked hard as a hairdresser, earning about \$23,000.00 a year, she did not earn enough to cover her expenses. After 2006, due to the downturn in the economy, she lost most of her clientele base. She continued to accrue debt and use credit cards to cover her expenses. The divorce was final in August 2010.

Prior to 2004, the Applicant and her daughter lived together and shared the household expenses. Her daughter wrote the checks to pay the bills and maintained the finances. (Tr. P. 35.) In December 2004, the Applicant's daughter got married and moved out of the house. The Applicant was left to pay the rent for the apartment, her car payment and her beautician booth rent, and handle the expenses without her daughter's assistance. During the period from 2004 to 2010, the Applicant resided on her own, had difficulty making ends meet, and fell behind on her bills. After obtaining her United States citizenship, in September 2009, the Applicant applied for a position with a defense contractor and was hired. From January 30, 2010, through August 5, 2010, the Applicant was deployed overseas. While she was deployed, she gave power of attorney to her daughter to handle her financial affairs in the states. (Applicant's

Exhibit B.) Her daughter did not receive notices of default or any delinquencies concerning any of Applicant's creditors and was not aware of them.

At the time the Applicant completed the security clearance application, she was not aware of her debts. She learned of the extent of her delinquent debts when she received notice from her security office. After learning of her indebtedness, she hired a debt resolution company who has helped her to resolve each of her delinquent debts set forth in the SOR. The debt set forth in allegation 1(r), it is not reflected on the Applicant's credit report, and therefore was not addressed. (Applicant's Exhibit A and Tr. p. 12.)

The following delinquent debts that were outstanding, have now been resolved, settled or paid. 1(a). A delinquent debt owed to a creditor in the amount of \$8,362.00 has been resolved. 1(b). A delinquent debt owed to a creditor in the amount of \$2,168.00 has been paid. 1(c). A delinquent debt owed to a creditor in the amount of \$2,052.00 has been paid. 1(d). A delinquent debt owed to a creditor in the amount of \$4,889.00 has been paid. 1(e). A delinquent debt owed to a creditor in the amount of \$114.00 has been paid. 1(f). A delinquent debt owed to a creditor in the amount of \$223.00 has been paid. 1(g). A delinquent debt owed to a creditor in the amount of \$1,662.00 has been paid. 1(h). A delinquent debt owed to a creditor in the amount of \$786.00 has been paid. 1(i). A delinquent debt owed to a creditor in the amount of \$5,744.00 has been paid. 1(j). A delinquent debt owed to a creditor in the amount of \$532.00 has been paid. 1(k). A delinquent debt owed to a creditor in the amount of \$8,434.00 has been paid. 1(l). A delinquent debt owed to a creditor in the amount of \$772.00 has been paid. 1(m). A delinquent debt owed to a creditor in the amount of \$3,345.00 has been paid. 1(n). A delinquent debt owed to a creditor in the amount of \$249.00 has been paid. 1(o). A delinquent debt owed to a creditor in the amount of \$8,736.00 has been paid. 1(p). A delinquent debt owed to a creditor in the amount of \$391.00 has been paid. 1(q). A delinquent debt owed to a creditor in the amount of \$3,960.00 has been paid. 1(r). A delinquent debt owed to a creditor in the amount of \$1,372.00 has been paid. (Applicant's Exhibit D.) Applicant's credit rating score has improved. (Applicant's Exhibits E and F.)

The Applicant's daughter testified that she was not aware of the fact that her mother was falling behind on her bills. She believes her mother was overwhelmed with trying to scrape together money to pay her apartment rent, car payment and beautician booth rent, and did not keep track of her debts. (Tr. pp. 35-36.) Applicant's daughter plans to continue to help her mother with her finances. She has now set up several bank accounts for her mother to help her save money so that she can buy a house sometime in the future. She testified that the Applicant now has approximately \$65,000 in her savings account, about \$10,000 in her checking account, and \$1,500 in another. She states that her mother no longer has credit cards and has no intention of ever using them in the future. (Tr. p. 23-34.)

The Applicant has received accolades and certificates of appreciation for her work overseas. (Applicant's Exhibit G.)

The Applicant has other relatives, including three sisters, a brother-in-law and a nephew, who are or have been serving overseas for the Defense Department. They are also United States citizens. While deployed overseas, the Applicant has no contact with these relatives. (Government Exhibit 2 and Tr. p. 43.)

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 obligations.

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 in 2004, after the Applicant's daughter got married and moved out of the house, the Applicant had difficulty paying her bills. Based upon her overhead and expenses, she did not earn enough to satisfy her debts. She used credit cards and lost track of her bills. In 2010, she was hired by a defense contractor and has been earning substantially more money than she was before. She has used these resources to resolve her delinquent debt. She has now paid off all of her delinquent debts and has a substantial savings account. She has acted responsibly and with integrity under the circumstances. She has done all that 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. Since becoming aware of her indebtedness, she had resolved it. She understands the importance of paying her bills on time and living within her means. She also knows that she 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 obligations* 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.
Subpara. 1.d.:	For the Applicant.
Subpara. 1.e.:	For the Applicant.
Subpara. 1.f.:	For the Applicant.
Subpara. 1.g.:	For the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	For the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	For the Applicant.
Subpara. 1.m.:	For the Applicant.
Subpara. 1.n.:	For the Applicant.
Subpara. 1.o.:	For the Applicant.
Subpara. 1.p.:	For the Applicant.
Subpara. 1.q.:	For the Applicant.
Subpara. 1.r.:	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