



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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) ISCR Case No. 10-08514
)
Applicant for Security Clearance)

Appearances

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

July 6, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on August 11, 2010. (Government Exhibit 1.) On October 31, 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.

Applicant answered the SOR in writing on December 2, 2011, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on February 13, 2012. A notice of hearing was issued on March 1, 2012, scheduling the hearing for March 28, 2012. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were received without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A and F, which were admitted into evidence without objection. She also testified on her own behalf. The record remained open until close of business on April 30, 2012, to

allow the Applicant the opportunity to submit additional documentation. The Applicant requested additional time to submit the documentation based upon a medical condition and she was given until close of business on July 2, 2012. The Applicant submitted one Post-Hearing Exhibit dated July 5, 2012, referred to as Applicant's Post-Hearing Exhibit A that was admitted without objection. The transcript of the hearing (Tr.) was received on April 10, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 58 years old and is unmarried. She is currently unemployed, but has been offered a job with a defense contractor 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 admitted all of the allegations set forth in the SOR. Credit Reports of the Applicant dated August 24, 2010; August 23, 2011; and March 19, 2012, reflect that the Applicant is indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of \$220,000. (Government Exhibits 2, 3 and 7.)

The Applicant has worked off and on for defense contractors since at least 1997, but has not had a security clearance. She began working for her previous employer in April 2011. In November 2011, through no fault of her own, she was laid off. In January 2012, she filed for unemployment. Prior to being laid off, the Applicant was involved in a contentious legal battle with the county that cost her approximately \$120,000 in litigation fees.

The Applicant is an avid horse lover and political activist, who moved into a small canyon town where she lives to raise her horses and escape the urban life and the intrusions of "big government." (Applicant's Exhibit D.) She is involved in horse rescue and has rescued four horses of her own. She has had a number of run-ins with the local government and believes that they were after her using harassment and corrupt tactics, with the intent of putting her in jail. A few of the issues she encountered with the county are set forth below.

In 2004, at a meeting with county officials, the Applicant denounced a proposal to limit the residents to no more than eight horses per acre. The ordinance later became law. (Applicant's Exhibit D.)

Sometime following the meeting, a county code enforcement officer and sheriffs came to the Applicant's home and told her that her horse corral was too close to the creek and that the wall beneath the corral needed upgrades to protect the water quality. The Applicant agreed to the fixes. (Applicant's Exhibit D.)

In February 2005, a boulder and rocks on the hill behind the Applicant's house fell on a teenage girl who was working on her computer in her bedroom and killed her. (Applicant's Exhibit A.) At a county hearing, the Applicant objected to a plan by the county to build a tunnel to bring water through the mountains located near her residence because she believed that the drilling would cause boulders and rocks to come down off the hills and endanger the public. (Applicant's Exhibit D.)

Then later in 2005, as a result of a car accident involving five teenagers who flipped their car off of a canyon road, the Applicant composted her horse manure, hay and mud from her stable and placed it along the rocks between the road and the creek (that runs through her property) and shaped it into a wall about two feet high, to prevent erosion. The Applicant believed that the wall would also help prevent further accidents. To keep the wall from sliding into the creek, the Applicant planted it with six blackberry bushes. County officials determined that the Applicant was engaged in an illegal dumping operation, an unlawful connection to a storm water drainage system, an illegal discharge, an unlawful alteration of a watershed, a failure to store solid waste in a container, a contamination of water with a material deleterious to fish, plant life or bird life and a public nuisance. The Applicant was asked to remove the wall and she refused. She states that bacteria results were negative, and she felt that she was being harassed. (Tr. p. 58.) The District Attorney charged the Applicant with 12 misdemeanor counts and won a 12 count conviction against the Applicant for polluting the creek which runs through her property. The Applicant was required to pay a \$5,000 fine and perform 200 hours of community service, along with three years of informal probation. (Applicant's Exhibit D.)

Between legal fees, involving three different attorneys, and lab tests, that included an expert witness, the Applicant spent about \$120,000 fighting the county. She even sold one of her properties to fund her campaign. The Applicant did not want to be put in jail. As a result, the Applicant did not pay her other bills and became delinquently indebted. The Applicant stated, "Why did I pay this and not my bills? They were trying to put me in jail. I have never been in jail in my life. I've never done anything to go to jail in my life. This was a fight. They were after me in ways you can't imagine. You tend to look at these guys and go - - - well, The Government is normal. The Government is okay." (Tr. p. 69.)

In May 2011, the Applicant filed for Chapter 13 bankruptcy in an effort to organize her finances and get under a plan to get her debts paid. (Tr. p. 42.) She states that in August 2011, the bankruptcy was dismissed because the trustee told her that she would not be able to do it without an attorney. (Tr. p. 42.) In March 2012, the Applicant re-filed for Chapter 13 and hired an attorney to represent her by making a deal to exchange a piece of property for the fee. (Tr. p. 42.)

The Applicant currently owns four pieces of real property that have no outstanding loans, but are encumbered by IRS tax liens, for the fine imposed by the county for Applicant's illegal berry planting. (Tr. p. 79.) As a result, the properties are more difficult to sell. The Applicant testified that she has every piece of property she owns up for sale right now and is aggressively trying to market them so that if one sells she can pay her debts. (Tr. p. 78.) She lives modestly and wants to pay her bills. She feels that she is in a catch 22 situation, she needs a job to pay her bills and in order to get a job, she needs to pay her bills. (Tr. p. 78.)

Credit reports of the Applicant indicate that the following delinquent debts remain outstanding. (Government Exhibits 2, 3 and 7.) The Applicant disagrees with the information on her credit reports. (Tr. p. 52.) A delinquent debt owed to a creditor in the amount of \$468 has not been paid. The Applicant states that she disputes the debt. (Tr. p. 43 - 44.) A tax lien owed to the Internal Revenue Service in the amount of \$6,314 remains owing. A tax lien owed to the Internal Revenue Service in the amount of \$5,083 remains owing. The Applicant states that she is working with an IRS agent and getting all of her taxes filed and up to date. She has now filed her 2008, 2009 and 2011 income tax returns. She has not yet filed her 2010 income tax returns. She believes she currently owes the IRS a total of about \$8,000 or less. (Tr. pp. 44 - 45.) A state tax lien in the amount of \$2,770 remains owing. The Applicant believes that the debt was paid through garnishment by her previous employer. (Tr. p. 46.)

Delinquent debts owed to the county in the amounts of \$828, \$69 and \$414 remain owing. The Applicant states that she did not live in that area and believes the debts are erroneous. (Tr. p. 47- 48.) A delinquent debt owed to a bank for a mortgage in the amount of \$200,000 remains owing. The Applicant tried to obtain a loan modification but was unsuccessful. (Applicant's Exhibit C.) She explained that this debt was for a second mortgage on a property that was foreclosed upon in December 2010, and written off by the bank. (Tr. p. 48.) A delinquent debt owed to a creditor in the amount of \$1,526 remains owing. The Applicant disputes the debt. (Tr. p. 49.) A delinquent debt owed to a creditor in the amount of \$4,840 remains owing. The Applicant stated that the debt was originally \$10,000 and that she has paid it down to the current amount before she ran out of money. (Tr. p. 49.) Delinquent debts owed to a creditor in the amount of \$166, \$178 and \$57 remain owing. The Applicant admits that one of the three will trace back to her, the others she disputes. (Tr. pp. 50- 51.) A delinquent debt owed to a creditor in the amount of \$490 remains owing. The Applicant disputes the amount of the debt. She contends that she has paid all of debt except for \$10.00 that she still owes. (Tr. p. 51.)

She also admits that she has other debts that are delinquent which are not alleged in the SOR. (Tr. pp. 52-53.) She states that she has paid other bills not listed in the SOR that include a hay bill for her horses, a department store and a personal loan. (Applicant's Exhibits E and F and Tr. Pp. 73-74.) When one of her properties sells, she will be able to resolve her indebtedness.

The Applicant's undated personal financial statement indicates that after paying her regular monthly expenses, without paying the delinquent debts listed in the SOR, she has \$1,250 left at the end of the month.

The Applicant's son is currently serving on active duty in the United States Navy as an E-6 and he has a crypto clearance. (Applicant's Exhibit A.)

A letter of recommendation from the Applicant's previous employer indicates that she was an excellent employee. Her many noted attributes, including her expert technical assistance, her skill in adapting to new situations, her efforts in helping the engineering department meet their schedule, made her an invaluable addition to the staff. She was given their highest recommendation. (Applicant's Exhibit B.)

Applicant's Post-Hearing Exhibit A indicates that she is currently battling stage 3C ovarian cancer. She underwent surgery on May 10, 2012. She is currently undergoing an 18 week chemotherapy regime. She was in the hospital and unable to attend her Bankruptcy hearing scheduled for May 24, 2012. Her Bankruptcy attorney has recommended that she dismiss the case. The Applicant indicates that given her medical condition, it will be almost two years before she can accept a job.

The Applicant claims that she has made some positive progress toward addressing her debt problems. Legal aide has assisted her in filing her income tax returns through the year 2011. The 2005 state lien against her has been released and the debt for the IR has been reduced by \$2,400. She states that she has contacted the county regarding certain filings on her credit report, and has written a letter to the District Attorney reminding him of the Judge's order limiting the judgment in the case to \$10,000. She states that she has placed her cabin up for sale, and she has deeded over her timeshare and its debts to the attorney handling her bankruptcy. (Applicant's Post-Hearing Exhibit A.) The Applicant failed to submit documentation to substantiate her claims.

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.

Condition 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.

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 a number of circumstances beyond the Applicant’s control, namely, her job layoff, litigation costs, difficulty finding steady and stable suitable employment, and most recently her medical condition, contributed to her excessive indebtedness. The Applicant made a choice to pursue the litigation, which was very costly, as a matter of principle, which prevented her from paying other bills. As a result, she must pay the consequences. She has not had sufficient income to pay her bills. Her intentions to pay her debts are good. Her efforts to file bankruptcy under Chapter 13 was also a good intention. However, first, there is no evidence of a plan under the bankruptcy to pay the debts. And, second, given her current financial situation, living solely on unemployment benefits, it is not reasonable to expect the Applicant to be able to pay her delinquent debts. Finally, even if the Applicant could

make some payments under a bankruptcy plan, a systematic payment schedule would need to be followed for a while before she would meet eligibility requirements to guarantee the government that she demonstrates fiscal responsibility. At the present time, in any case, the Applicant remains excessively indebted and she has not paid the majority of her delinquent debts.

Furthermore, understandably, given her current medical condition, the Applicant is not in a situation that will enable her to pay her delinquent debts. Under the particular situation here, the Applicant has not met her burden of proving that she is eligible for a security clearance at this time. Most if not all of her delinquent debts remain owing. Although she has made some accomplishments toward her goal of resolving her debts, she has not done enough to meet the eligibility requirements for access to classified information. Thus, she has not demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. The record is completely void of evidence in mitigation. There is insufficient evidence of financial rehabilitation at this time. It is important to note that in the event that the Applicant does follow a payment plan, significantly reduces her indebtedness or even resolves her indebtedness, she may reapply for a security clearance in the future and be much more eligible. At this time however, 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 (c) *a history of not meeting financial obligations*, apply. Although Mitigating Condition 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. Most of her delinquent debts remain owing and she has not shown that she is financially responsible. Accordingly, I find against 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 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 excessive 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.
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.
Subpara. 1.m.: Against the Applicant.
Subpara. 1.n.: Against the Applicant.
Subpara. 1.o.: 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