



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-03580

Appearances

For Government: Robert J. Kilmartin, Department Counsel
For Applicant: *Pro se*

August 15, 2012

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on October 27, 2010. (Government Exhibit 4.) On February 14, 2012, 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 in writing on March 2, 2012, in which she elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on May 4, 2012. The Applicant received the FORM on May 30, 2012. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant submitted a reply to the FORM on June 2, 2012. This case was assigned to the undersigned on July 17, 2012. Based upon a

review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 43 years old and has four children. She is employed with a defense contractor as a Security Officer 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 allegations 1.a, 1.b, 1.c, 1.i, 1.j, and 1.k.. She denied each of the other allegations set forth in the SOR: Credit Reports of the Applicant dated November 13, 2010; and October 2, 2011, reflect that the Applicant is indebted to multiple creditors set forth in the SOR, in an amount totaling at least approximately \$15,000. (Government Exhibits 6 and 7.)

1.a. In December 2001, the Applicant filed for Chapter 13 Bankruptcy protection. (Government Exhibit 8.) The case was dismissed in September 2003 because she failed to comply with the court's order. The record is unclear as to why she initially needed to file bankruptcy. In February 2009, the Applicant was laid off from her job. She was unemployed until September 2010, when she began working for her current employer. During this period of unemployment, she fell behind on her bills and became more indebted. The debt included among other things, two judgments, one obtained by a hospital, a repossessed vehicle, and several medical debts for treatment she or her children received.

The following debts set forth in the SOR became outstanding. 1.b. A judgment against her by a hospital in the amount of \$1,326 remains owing. 1.c. A debt owed to a creditor in the amount of \$163 remains owing. 1.d. A debt owed to a creditor in the amount of \$963 remains owing. 1.e. A debt owed to a creditor in the amount of \$920 remains owing. 1.f. A debt owed to a creditor in the amount of \$25 remains owing. 1.g. A debt owed to a creditor in the amount of \$453 remains owing. 1.h. A debt owed to a creditor in the amount of \$148 remains owing. 1.i. A debt owed to a creditor in the amount of \$111 remains owing. 1.j. A debt owed to a creditor in the amount of \$499 remains owing. 1.k. A debt owed to a creditor in the amount of \$181 remains owing. 1.l. A debt owed to a creditor for a repossessed vehicle in the amount of \$7,464 remains owing. 1.m. A judgment filed against the Applicant in the amount of \$1,364 remains owing. 1.n. A debt owed to a creditor in the amount of \$1,202 remains owing.

1.o. A debt owed to a creditor in the amount of \$83 remains owing. 1.p. A debt owed to a creditor in the amount of \$41 remains owing. 1.q. A debt owed to a creditor in the amount of \$215 remains owing. 1.r. A debt owed to a creditor in the amount of \$115 remains owing. 1.s. A debt owed to a creditor in the amount of \$16 remains owing,

She states that she was not aware of many of the delinquent accounts or the extent of her indebtedness until she met with the investigator from the Department of Defense. In a statement she gave to the investigator she stated that she would contact each creditor and if she owed the debts, she would make arrangements to pay the debt, either by negotiating a settlement or setting up a payment plan. (Government Exhibit 5.)

In her answer to the SOR, the Applicant stated that she hired a law firm to assist her in resolving her delinquent debts, and that they are handling the matter. It is not clear from the record what, if anything, the law firm has done. It is noted that Applicant's most recent credit report dated October 2, 2011, lists only nine of the eighteen original delinquent debts set forth in the SOR. However, there is no explanation as to what happened to those debts. Its possible that the law firm is responsible for having those debts removed from her credit report. Even so, the Applicant remains excessively indebted with no explanation as to how she will pay her debts. She submitted a four page internet correspondence about her attorney and a list of her debts, but it does not adequately address her financial situation. (See Applicant's Reply to FORM). She has failed to provide any documentary evidence to support her statements concerning her contacts with her creditors, any payments made, her financial budget if she has one, or any other detail to support a showing of fiscal responsibility. She has not provided sufficient detail discussing each creditor and what she has done if anything to resolve her debts.

It is noted that the Applicant is a single mother of four children who has never received any child support or alimony from either of the two fathers of her children.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance 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 October 27, 2010. (Government Exhibit 4.) Question 26.(b) of the application, in paraphrased form, asked the Applicant, In the last seven years, have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose her vehicle repossession set forth in subparagraph 1.i, of the SOR. (Government Exhibit 5.)

Question 26.(e) of the application in paraphrased form asked the Applicant, "In the last seven years, have you had a judgment entered against you? The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose the judgments against her as set forth in subparagraph 1.b, and 1.m, of the SOR. (Government Exhibits 5 and 7.)

Question 26.(g) of the same application, in paraphrased form, asked the Applicant, For the last seven years, have you had bills or debts turned over to a collection agency? The Applicant answered, "NO." (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose the collection accounts set forth in subparagraphs 1.c. through 1.i, 1.n, 1.o, and 1.q, through 1.s, of the SOR. (Government Exhibit 7.)

Question 26.(h) of the same application, in paraphrased form, asked the Applicant, In the last seven years, have you had any account or credit card suspended, charged off or cancelled for failing to pay as agreed? The Applicant answered, "NO." (Government Exhibit 1.) This was a false answer. She failed to disclose the charged off accounts set forth in subparagraphs 1.j, through 1.l, and 1.p, of the SOR. (Government Exhibit 7.)

Question 26.(m) of the same application, in paraphrased form, asked the Applicant, In the last seven years have you been over 180 days delinquent on any debts? The Applicant answered, "NO". (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose the delinquent debts set forth in subparagraphs 1.b, through 1.s, of the SOR. (Government Exhibits 5 and 7.)

Question 26.(n) of the same application, in paraphrased form, asked the Applicant, Are you currently over 90 days delinquent on any debts? The Applicant answered, "NO". (Government Exhibit 4.) This was a false answer. The Applicant failed to disclose the delinquent debts set forth in subparagraphs 1.b, through 1.s, of the SOR. (Government Exhibits 5 and 7.)

The Applicant indicated in response to each of the questions on the security clearance application concerning her finances that she did not lie and that everything she revealed was true. (Applicant's Reply to FORM.) 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:

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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 some circumstances beyond the Applicant's control, namely, an extended period of unemployment and having to support four children on her own without child support, contributed to her financial difficulties. Since September 2010 she has worked full time. She has hired a law firm to help her resolve her debts.

The Applicant has done nothing to demonstrate that her delinquent debts have been paid or otherwise resolved. She has provided no explanation of what happened to the debts listed in her bankruptcy in 2003 or what has been done with respect to her more current delinquent debts. She has failed to adequately explain why her delinquent indebtedness has continued even after she became employed in 2010. Although she has hired a law firm to help her with her delinquent debts she has failed to explain what is being done to resolve them. There is no evidence in the record that she has paid even one of her delinquent debts. She has not done enough to show that she is fiscally responsible. 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.

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. Assuming that she works to resolve her debts and then shows that she has not acquired any new debt that she is unable to pay, she may be eligible for a security clearance in the future. However not at this time. 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. 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. Although she was not accurate, she answered the questions to the best of her ability at the time. When she completed the application, she was not aware of the extent of her indebtedness. She knew that she had some debt, but she did not know the particulars. Until meeting with the investigator from DoD, she had no clear understanding of her financial situation. Despite this, it is still not clear that she now realizes the importance associated with the security clearance application or that she must be as accurate as possible when answering the questions. However, I do not believe her inaccuracies were done to conceal the truth or to be deceitful. 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.
- 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.
- Subpara. 1.p.: Against the Applicant.
- Subpara. 1.q.: Against the Applicant.
- Subpara. 1.r.: Against the Applicant.
- Subpara. 1.s.: 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.
- Subpara. 2.e.: For the Applicant.
- Subpara. 2.f.: 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