



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-09287
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Department Counsel
For Applicant: *Pro se*

August 20, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on April 14, 2011. (Government Exhibit 5.) On January 25, 2013, the Department of Defense (DoD), 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 responded to the SOR in writing on February 22, 2013, and 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 Applicant on April 30, 2013. Applicant received the FORM on May 12, 2013. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant failed to submit a response to the FORM. This case was assigned to the undersigned on July 24, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 47 years old, and married but separated from her husband. She has two children, one from a previous relationship. She has an Associates Degree and is employed with a defense contractor as a Security Officer. She is seeking 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 each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated April 28, 2011; August 11, 2012; and August 17, 2012, reflect that the Applicant is indebted to fifty separate creditors in an amount totaling in excess of \$80,000. (Government Exhibits 6, 7 and 8.)

Applicant joined the United States Army in May 1985, and served until she was honorably discharged in April 1986. She also worked for ten years as a Deputy Sheriff, for which she receives a small retirement check for the rest of her life. She retired early from that job in order to raise her now six year old daughter.

Applicant has a history of financial difficulties. She attributes her separation from her husband in 2007, and the loss of her job in 2008, for her delinquent indebtedness. Although she has received some child support from her husband she indicates that limited resources have prevented her from being able to pay her bills. Unstable work and low paying jobs meant she was not able to keep up with her bills. The record indicates that Applicant has been employed full-time from about October 1995 to December 2008 at various jobs. She was unemployed from December 2008 to January 2010 due to accumulating excessive absences occasioned by her own as well as her daughter's illnesses. She then worked part-time from about January to February 2010. She has been employed full time with her current employer since March 2010. Applicant admits that she has a great deal of debt for which she is responsible. She indicates that she is taking steps to resolve it.

In February 2009 Applicant filed for Chapter 13 bankruptcy in order to resolve her debts. In this petition, she listed liabilities of \$43,957. (Government Exhibit 9.) When she became unemployed, she was unable to pay the required \$450 monthly payment to the trustee and the petition for bankruptcy was dismissed. In December 2012 Applicant again filed for Chapter 13 bankruptcy protection. (Government Exhibit 4.) This time she listed liabilities of \$71,000. In January 2013 the bankruptcy trustee directed Applicant's employer to begin deducting \$98 per week from her paycheck for a monthly payment of \$392. The record indicates that prior to the trustee's wage assignment, Applicant had a net monthly remainder of \$425. After the subtraction of the monthly wage assignment,

her net monthly remainder is \$33. Applicant indicates that she does not buy expensive things that she does not need. She states that she is the type of person who wants to repay the people she owes.

There is no evidence in the record that demonstrates that her financial problems are being resolved or are under control. In the absence of additional documentary evidence submitted in response to this FORM to show that Applicant has been able to begin to regain some financial stability by establishing a meaningful track record of resolving her delinquent debts, this concern must be decided against her in evaluation of her suitability to have access to classified information.

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.

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 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, 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.

The Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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 his security clearance eligibility.

Applicant's history of financial indebtedness has not been mitigated. In fact the evidence shows that from the time she first filed for bankruptcy protection under Chapter 13 in 2009, and then again most recently when she filed in 2012, her financial situation has worsened considerably. Although the evidence shows that some circumstances largely beyond her control started her financial problems, namely a separation from her husband in 2007, and the loss of her job in 2008, her wages are being garnished to pay the bankruptcy trustee at \$98 weekly or \$392 monthly which is not a lot of money considering the size of her debt. Admittedly, Applicant has started the process of resolving her debts but with \$50,000 or more in delinquent debt, she has a long way to go to demonstrate that she is fiscally responsible. She has simply done too little, too late.

Applicant must show that she can and will resolve her debts. In this case, there is no evidence that she can do so. She has not shown an ability to pay all of her delinquent debts or live within her means. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that she can properly handle her financial affairs.

Applicant has not met her burden of proving that she is worthy of a security clearance. Assuming that she continues to work 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. 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, but is not controlling. There are simply too many delinquent debts that are not being addressed. Accordingly, I find against 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 financial indebtedness and the effects it can have on his 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. through Subpara. 1.z: Against the Applicant.

Subpara. 1aa. through Subpara. 1.zz: 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

