



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-10196  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: Ronald P. Ackerman Attorney At Law

June 27, 2013

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (E-QIP) on June 9, 2011. (Government Exhibit 1.) On November 21, 2012, 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.

The Applicant responded to the SOR on December 21, 2012, and she requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on May 13, 2013. A notice of hearing was issued on May 14, 2013, and the hearing was scheduled for June 4, 2013. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, which were also admitted into evidence. She also testified on her own behalf. The record remained open until close of business on June 12, 2013, to allow the Applicant the opportunity to submit

additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A which was admitted without objection. The official transcript (Tr.) was received on June 14, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **FINDINGS OF FACT**

The Applicant is 39 years old. She has a Master's Degree in Film and Television. She is employed with a defense contractor as an Engineer 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 each of the allegations set forth in the SOR under this guideline and provided an explanation. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated June 18, 2011; August 14, 2012; January 28, 2013; and June 3, 2013 reflect that at one time Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling about \$65,000. (Government Exhibits 3, 4, 5 and 6.)

Applicant began working for her current employer in November 2002. At that time, she was not in debt and she paid her bills on time. In 2008 she was involved in two serious car accidents within two weeks, which started her financial problems. The first accident occurred on October 27, 2008. Applicant explained that a young girl in her 20's came driving down the parking structure toward the Applicant's car in the Applicant's lane and hit her head on. As a result, Applicant broke her rib and suffered a whiplash. Although the Applicant had health insurance through her employer, her policy was not a good one, and her deductible was high and medical bills began to accumulate.

Two weeks later on November 14, 2008, Applicant was involved in a major hit and run accident, this time it occurred on the freeway. Applicant explained that the impact from the other car spun her car around several times and totaled it. It also caused her serious bodily injury. Both of her knees, and both of her shoulders, were seriously injured. Her face required plastic surgery because her nose was broken. She also suffered gastro problems with her organs. (Applicant's Exhibit A.) Her surgeries included ACL surgery on her left knee, a left knee OATS transplant (cartilage replacement), two right shoulder surgeries, one left shoulder surgery, and nine spinal

injections or epidurals. In all, Applicant was required to undergo eight major surgeries and attend more than 150 physical therapy sessions. (Applicant's Exhibit A and Government Exhibit 2.) More medical bills accumulated.

Following the surgeries she could not work and was off work for extended periods of time to heal. In total, she missed about nine months of work. The combination of missing work, which dramatically reduced her income, and incurring extensive medical costs caused her to go into serious debt. To survive during this time, she borrowed money from her sister, lived off of credit cards, and state disability, which amounted to about half of what she was earning when she worked. Applicant was forced to short sale her home in December 2008.

In the midst of this situation, the Applicant contacted her delinquent creditors to inform them about her situation, but they were not cooperative. She tried to set up payment plans, but they would not work with her. She started missing payments and they sent her to collections. She realized that she could have filed bankruptcy but she felt she had a moral obligation to pay her bills and she wanted to do so. In order to pay her delinquent debts she cashed out \$25,000 from her 401 (k) pension plan to pay her bills. (Applicant's Exhibit B.) She calculates her out of pocket expenses were about \$28,000 in medical bills.

Once her medical condition stabilized, she was able to go back to work full time. Since then she has worked diligently to resolve her delinquent debts. The three delinquent debts listed in the SOR were at one time owing but, in December 20012, she settled each of the debts. The Applicant was indebted to a bank for a delinquent credit card in the amount of \$11,905. She settled this debt for less than she owed, and it no longer outstanding. (Applicant's Exhibit F and Tr. p. 41-42.) Applicant was indebted to another bank for a delinquent credit card in the amount of \$29,099. Applicant settled this debt for less than she owed, and it is no longer outstanding. (Applicant's Exhibit D and Tr. p. 42.) Applicant was indebted to a bank for a delinquent credit card in the amount of \$22,170. She settled this debt for less than she owed, and it is no longer outstanding. (Applicant's Exhibit E and Tr. p. 43.) Although not alleged in the SOR, the Applicant also paid her student loans, and a debt owed to another bank for a credit card. (Applicant's Exhibit C.)

Applicant's financial statement dated September 12, 2012, indicates that after she pays her monthly expenses, she has a net remainder left of \$407 per month. (Government Exhibit 2.) The Applicant rents an apartment, lives a simple lifestyle, and is current with all of her monthly expenses. (Tr. p. 41.) She now has only one credit card and owes only about \$25 dollars on the account. She states that she has one more surgery to undergo but her employer is paying for it, as it falls under workers compensation. Applicant has also changed her medical insurance to a better policy with more coverage.

Letters of recommendation from the Applicant's supervisor and a coworker indicate that Applicant is considered to be an excellent employee and her job

performance is exemplarily. Her work is of the highest caliber and always delivered in a timely fashion. She is pleasant to be around, is highly respected by management and her peers, and is a dedicated employee and a valued member of the organization. (Applicant's Post-Hearing Exhibit A.)

## **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;

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 the Applicant only became delinquently indebted after being involved in two car accidents in 2008. The injuries she sustained from the accidents left her unable to work for about nine months and significantly reduced her income preventing her from being able to pay her bills. Since her medical condition has stabilized she has been able to return to work, and she has paid her bills. She has now resolved her past due indebtedness. She has acted responsibly and reasonably under the circumstances.

These unpredictable, very unfortunate circumstances that occurred in 2008 were isolated incidents that will hopefully not recur. Applicant's medical condition has stabilized and she is now working full time. She understands that she must remain fiscally responsible if she is to hold a security clearance. She has made a good-faith effort to resolve her past due indebtedness, and she has resolved her delinquent debts. She has not incurred any new debt that she cannot afford to pay. She has clearly demonstrated that she can properly handle her financial affairs. There is clear evidence of financial rehabilitation. 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. I have considered her favorable character reference letters. (Applicant’s Post-Hearing Exhibit A.) 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. It mitigates 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.

### **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

