



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



In the matter of:)
)
-----) ISCR Case No. 11-14160
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel
For Applicant: *Pro se*

November 4, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on June 27, 2011. (Government Exhibit 1.) On May 8, 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.

The Applicant responded to the SOR on May 20, 2013, and she requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on June 25, 2013. A notice of hearing was issued on June 26, 2013, scheduling the hearing for July 23, 2013. The Government presented six exhibits, referred to Government Exhibits 1 through 6, which were admitted without objection. The Applicant called one witness and presented eight exhibits, referred to as Applicant's Exhibit A through H, which were admitted without objection. She also testified on her own behalf. The official transcript (Tr.) was received on August 1, 2013.

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

FINDINGS OF FACT

The Applicant is 25 years old, unmarried and has no children. She has a Bachelor's Degree in Geography and Environmental Studies. She is employed with a defense contractor as a Survey Specialist 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 E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because she has engaged in conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules and regulations that can raise questions about an individuals reliability, trustworthiness and ability to protect classified information.

The Applicant denied the single allegation set forth in the SOR under this guideline. In 2007 the Applicant began dating her girlfriend. About three months into the relationship, she learned that her girlfriend was an illegal drug user. (Tr. p. 71.) About a year after they started dating, Applicant learned that her girlfriend was also an illegal drug dealer. (Tr. p. 72.) Applicant continued to maintain an off and on, sporadic relationship with her girlfriend until Applicant obtained employment with her current employer in January 2011. Applicant explained that since she loved her girlfriend she would accompany her when she would engage in small time marijuana drug deals. Applicant stated that her girlfriend sold the marijuana to her fellow peers while the Applicant often waited in the car. (Trp. 73.) Sometimes the Applicant did not know that they were engaged in a drug sale. During the last year they dated, the Applicant's mother became a frequent user of marijuana, and she would buy marijuana from the Applicant's girlfriend. To illustrate the transaction, Applicant's mother would give the money to buy the drugs to the Applicant and Applicant would then give the money to her girlfriend. Applicant's girlfriend would then give the marijuana to the Applicant, and the Applicant would then give it to her mother.

Applicant stated that when she began her current employment, she initiated a break up with her girlfriend due to irreconcilable differences, and because she did not want to be associated with that lifestyle anymore. Applicant stated that in the last two and a half years, she has had infrequent contact with her girlfriend and limited texting. Applicant was invited to dinner with her girlfriend and last saw her during that dinner on May 30, 2013, just two months before the hearing. (Tr. p. 76.)

Paragraph 2 (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 the single allegation set forth in the SOR under this guideline. Applicant explained that she, her mother, and her brother all live together in a house her mother owns. They all share the household expenses.

Applicant testified that she was an over achiever and in the eighth grade was the Valedictorian. In high school she was twelfth in her class. She attended a prestigious university from September 2006 to December 2010, and obtained her Bachelor's Degree. She explained that while in college she applied for a private student loan in the amount of \$40,000. She co-signed on the loan with her mother to help pay for her education, and to support the family home health care business. Applicant testified that \$30,000 of the loan went to support the family business, which is still in operation, and \$10,000 went to the Applicant for her school expenses. Applicant stated that someone in her family made the payments on the loan for about six months before it defaulted. In 2008 and 2009, during the economic crisis, the family business was not generating enough revenue and no one was able to continue making the loan payments. Applicant was only a student worker, and she did not have the money to make the payments. As a result, Applicant became indebted to a bank for the loan in the amount of \$46,000 for this account that was placed into collection for nonpayment. (Tr. p. 66.) In 2010, Applicant's mother was laid off of her primary job, and she filed for Chapter 7 bankruptcy. In March 2011, the Applicant's mother's debts were discharged in bankruptcy. (Tr. p. 67.) Applicant was initially under the impression that the student loan for \$46,000 was discharged in her mother's bankruptcy, but later learned that it was not. (Tr. p. 68.)

Applicant is currently negotiating with the bank on the loan to determine how best to handle the debt. The debt that is now owed is in excess of \$50,000 that include principal, interests and penalties. Applicant hopes to settled the debt for less than what is owed. Nothing has been resolved and no payments have been made toward the debt as of yet. (Tr. p. 68.)

In 2010, Applicant became the account manager and now controls the payment of the household bills and expenses. (Tr. p. 82.)

In 2012, Applicant's mother suffered from menopause that caused some erratic behavior. Her mother moved out of the house and into her own apartment for a year or so, which caused the Applicant more financial pressure. She has since moved back into the house and is sharing expenses with the Applicant and Applicant's brother.

Applicant's direct supervisor testified that Applicant has been with the company for the past three years but she has only known her for the past year. Her supervisor considers the Applicant to be an honest, trustworthy and responsible person. Her supervisor believes the Applicant has been called to this security clearance hearing

because of financial issues, and has no knowledge of illegal drug involvement. She testified that their company has a no tolerance policy to illegal drug use and she considers the Applicant to be an asset to the company. (Tr. pp. 24-30.)

Employee performance evaluations of the Applicant for the periods from December 2010 through October 2012 reflect that she either "meets requirements" or "exceeds requirements" in every category that include job knowledge, productivity, accuracy, problem solving ability, technological skills, dependability, flexibility, attendance and punctuality, teamwork, interpersonal skills, self-management, communication skills and leadership abilities. (Applicant's Exhibit H.)

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 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.

Conditions that could raise a security concern:

16.(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard protected information; and

16.(g) association with persons involved in criminal activity.

Conditions that could mitigate a security concern:

None.

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;

19.(c) a history of not meeting financial obligation; and

19.(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Conditions that could mitigate security concerns:

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 poor personal conduct and 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 engaged in poor personal conduct (Guideline E) and 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 beginning in 2007, the Applicant began a close and loving relationship with her girlfriend, an illegal drug user and illegal drug dealer. Applicant continued to date her girlfriend and accompany her on drug deals during their off and on relationship because she loved her, until their last break up in 2010. Applicant continues to associate with her girlfriend as is evidenced by her most recent dinner date in May 2013, just two months before the hearing. Furthermore, Applicant's mother has been using and purchasing illegal drugs. Applicant currently lives with her mother. This conduct shows poor judgment, unreliability and untrustworthiness and raises a serious security concern.

Under Guideline E, (Personal Conduct), Disqualifying Condition 16.(c) *credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics indicating that the person may not properly safeguard protected information*, and 16.(g) *association with persons involved in criminal activity* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

In addition, the Applicant has not resolved her delinquent indebtedness. She obtained a student loan under false pretenses as she did not borrow or use the entire amount of money for her student expenses. She gave most of the money to her family to be used for their family business. In fact, only \$10,000 of the \$46,000 was used for college expenses. Over the course of several years, Applicant has continually exhibited a passive approach toward her finances when it comes to what her family wants or needs and puts their interests first. This has left her in the situation she is in now. She remains excessively indebted. She has been naive, uninformed and ignorant of the importance of paying her bills on time. Furthermore, she does not seem to realized the magnitude of her actions which only comes with sufficient maturity that she has not exhibited. There is insufficient evidence of financial rehabilitation at this time. The Applicant has failed to demonstrate 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 addressed the 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. 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*; 19.(c) *a history of not meeting financial obligations*; and 19.(d) *deceptive or illegal financial practices such as embezzlement*,

employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust apply. None of the mitigating conditions are applicable. 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 the Applicant’s poor decision making and 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 failed to 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 Paragraphs 1 and 2 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: 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