



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-14309
)
Applicant for Security Clearance)

Appearances

For Government: Greg A. Cervi, Department Counsel
For Applicant: *Pro se*

November 4, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on August 5, 2011. (Government Exhibit 5.) On March 27, 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 in writing on April 30, 2013, 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 July 24, 2013. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 2, 2013, and she failed to submit a response to DOHA. The case was assigned to the Administrative Judge for resolution on September 13, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 36 years old, and married with two children. She attended two universities between 1995 and 2001, however there is no indication that she obtained a degree. She is employed with a defense contractor as an Animal Trainer 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. Credit Reports of the Applicant dated March 7, 2013; December 12, 2012; and August 23, 2011, reflect that the Applicant is indebted to each of the creditors set forth in the SOR totaling an amount in excess of \$180,000. (Government Exhibits 7, 8, and 9.) Most of the delinquencies, specifically allegations 1(a), 1(c), 1(d), and 1(g), are credit card accounts. Allegation 1(b) is a home equity loan. Allegation 1(e) is a collection account for a boat loan that went into default. The boat was voluntarily repossessed in January 2010. Allegation 1(f) is a state tax lien entered against the Applicant in November 2010.

Applicant indicates that her financial problems began when her husband lost his job in December 2009. At that time, Applicant was unemployed and pregnant with her second child. By January 2010, Applicant could no longer afford to make payments on her credit cards and loan debts. She also fell behind on her mortgage payments, but with a strong desire to try to keep her house, she continued to make some kind of monthly payment to the lender, no matter what the amount of the payment. Their family income was limited to her husband's unemployment benefits until they expired.

To resolve their indebtedness, Applicant contacted a bankruptcy attorney to discuss their options under the bankruptcy laws. At the same time, Applicant tried to obtain a home loan modification. After discussing the matter with her attorney, she decided not to file bankruptcy until they had a decision on their loan modification. She further indicated that in order to file bankruptcy she needed to save between \$3,500 and \$4,000. The loan modification of the Applicant's home loan took about one year, and in September 2012 her home loan was modified. She has not yet filed bankruptcy.

The following delinquent debts became owing and remained outstanding at the time the FORM was issued: 1.(a) a credit card debt owed to a creditor in the amount of \$11,845; 1.(b) a debt owed to a bank for a home equity loan in the amount of \$106,000; 1.(c) a credit card debt owed to a creditor in the amount of \$18,694; 1.(d) a credit card debt owed to a creditor in the amount of \$25,843; 1.(e) a debt owed to a creditor in the

amount of \$9,706; 1.(f) a delinquent tax lien entered against the Applicant in November 2010 in the amount of \$108; and 1.(g) a debt owed to a creditor in the amount of \$7,918.

Applicant began working for her current employer in July 2011. Her husband is also now employed. Applicant's personal financial statement indicates that she and her husband have a net monthly income of \$3,334. Their expenses total \$3,156 with a net remainder of \$178 without making any payments toward any of their delinquent debts. Applicant also has a savings account that contains \$200 and a 401(k) with \$6,000.

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 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 a history of financial delinquencies (Guideline F) that have gone unaddressed. The evidence indicates 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.

Despite the fact that the Applicant and her husband are now employed, their past due debts have gone unresolved for a significant amount of time. The Applicant has very little monthly net remainder available to apply toward her monthly delinquent debts. There is no evidence of any kind to show that the Applicant has made any effort or attempt to begin to address these debts besides saving for an eventual bankruptcy. Although the evidence shows that circumstances largely beyond her control started her financial problems, namely her and her husband's unemployment, she remains excessively indebted. Applicant has not started the process of resolving her debts and has a long way to go to demonstrate that she is fiscally responsible.

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 any of her delinquent debts or to 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 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.

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

