



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-01357  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: *Pro se*

November 4, 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 November 30, 2011. (Government Exhibit 5.) On June 12, 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 July 2, 2013, and she requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on August 26, 2013. A notice of hearing was issued on August 27, 2013, and the hearing was scheduled for September 17, 2013. At the hearing the Government presented ten exhibits, referred to as Government Exhibits 1 through 10, which were admitted without objection. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C, which were also admitted into evidence. She also testified on her own behalf. The record remained open close of business on October 8, 2013 to allow the Applicant the opportunity to provide additional

supporting documentation. Applicant submitted one Post-Hearing Exhibit on October 29, 2013, consisting of 14 pages, referred to as Applicant's Post-Hearing Exhibit, which was admitted without objection. The official transcript (Tr.) was received on September 25, 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 71 years old and is widowed. She has a high school diploma. She is employed with a defense contractor as a Security Guard/Receptionist 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 15, 2001; December 9, 2011; March 5, 2013; and September 11, 2013, reflect that the Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling about \$25,000. (Government Exhibits 4, 6, 7 and 10.) Department Counsel also moved to amend allegation 1(k) of the SOR to reflect that the Applicant filed Chapter 7 bankruptcy on or about November 1995, and that the debts were discharged on February 13, 1996. Applicant had no objection to the proposed amendment. (Tr. p.55.) The proposed amendment was made.

Prior to 1993, the Applicant and her husband both operated small businesses. He had a small tire shop, and she operated a small clothing boutique as a part-time job. She also worked full time at another company. In 1993, the Applicant's husband passed away unexpectedly, and her financial problems began. That same year, the Applicant was laid off of her full time job. Without both incomes, her bills fell behind. With the little money she earned from her boutique, she tried to keep up with the mortgage payments on their house while other bills fell behind. At some point, Applicant was advised by her attorney to file for Bankruptcy under Chapter 7 to discharge her outstanding debts. In February 1996 some of her debts were discharged. (Government Exhibit 1.) Other debts that were not listed in her Chapter 7 she continued to pay in order to show the bank that she could still afford to keep her house.

Applicant was audited by the Internal Revenue Service and required to pay taxes in regard to her former husband's business. As a strategic method to protect her house from foreclosure, her attorney advised her to file for Chapter 13 bankruptcy in

November 1995. She continued to struggle to make the mortgage payments for several months before finding out that the company managing her account was fraudulent, and that they ran a scam on her. Her house was eventually foreclosed upon in the later part of 1997. Her Chapter 13 bankruptcy which she filed on July 19, 1996, was converted to a Chapter 7 bankruptcy, and then dismissed in August 1998. (Government Exhibit 2.)

At the age of 65, Applicant started receiving Social Security benefits, but it was not enough to cover her bills and expenses. She wanted to work and realized that she still needed a job to supplement her Social Security benefit. In 2000, her current employer called her back to work. She worked there, earning minimum wage, until 2004, and her finances slightly improved. In 2004, she started working for her present employer again. She now earns \$12.95 an hour and roughly \$28,000 annually. She also receives a small monthly pension from her previous employer in the amount of \$237.

In order to resolve her financial indebtedness once and for all, she has hired an attorney. A letter from her attorney dated September 11, 2013, indicates that the Applicant has completed financial counseling and has provided him with all of the supporting documentation. He states that she qualifies for and would benefit from a filing under Chapter 7 of the bankruptcy code and he is in the process of filing her bankruptcy petition. (Applicant's Exhibit A.)

Applicant indicated that the debts listed in the SOR are predominantly delinquent credit card debt and dental bills that at one point she was trying to pay. She was forced to stop when she realized that she simply did not have the money to pay them. Applicant provided a copy of her Chapter 7 bankruptcy petition that was filed on October 23, 2013, and the list of creditors that shows that each of the delinquent debts in the SOR have been included in her Chapter 7 bankruptcy filing. These include: A debt to a bank in the amount of \$3,368; A debt to a bank in the amount of \$2,100; A debt to a bank in the amount of \$2,150; A debt to a bank in the amount of \$4,291; A debt to a bank in the amount of \$1,576; A debt owed to a bank in the amount of \$3,296; A debt owed to a bank in the amount of \$6,240; A debt owed to a bank in the amount of \$3,497; A debt owed to a bank in the amount of \$2,386; and, a debt owed to a bank in the amount of \$707. (See Applicant's Post-Hearing Exhibit.)

Letters of recommendation from the Director of Security at her company and the Site Supervisor indicate that the Applicant is loyal, reliable, dedicated, hardworking and trustworthy. She has always abided by all security policies, procedures and DoD regulations. She is respected by her colleagues and peers and considered to be an asset to the company. (Applicant's Exhibits B and C.)

## 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 became financially indebted due to her husband's untimely death in 1993 and her loss of employment that same year. This situation or circumstance was, for the most part, beyond the Applicant's control. For several years thereafter, she tried to get back on her feet financially, but she consistently ran into difficulty ranging from receiving bad legal advice, to being unexpectedly audited by the IRS, to having her house foreclosed upon after trying so hard to prevent it, and having her money that she thought was going toward her mortgage payments taken by a fraudulent company designed to take advantage of people like her. Despite this setback, Applicant has recently been focused on resolving her indebtedness and is making progress in this regard. On October 23, 2013, her attorney filed for Chapter 7 bankruptcy protection on her behalf to discharge her delinquent debts. Applicant has already completed the required financial counseling course.

Applicant has not incurred any new debt and she is living within her means. She has done everything possible to show that she is fiscally responsible. She has acted reasonably under the circumstances, and has 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 Exhibits B and C.) 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, including the Applicant's favorable work history. They 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 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.
Subpara. 1.d.:	For the Applicant.
Subpara. 1.e.:	For the Applicant.
Subpara. 1.f.:	For the Applicant.
Subpara. 1.g.:	For the Applicant.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	For the Applicant.
Subpara. 1.j.:	For the Applicant.
Subpara. 1.k.:	For the Applicant.
Subpara. 1.l.:	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

