



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



In the matter of:)
)
) ISCR Case No. 15-00378
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Jim Green, Attorney At Law

October 18, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing, (e-QIP) on March 23, 2013. (Government Exhibit 1.) On September 27, 2015, 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) detailing the security concerns under Guideline F for Applicant. The SOR set forth the reasons why DoD adjudicators 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 Applicant and recommended referral to an administrative judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on October 26, 2015, and she requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on March 15, 2016. A notice of hearing was issued on March 22, 2016, scheduling the hearing for April 27, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6 which were admitted without objection. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were admitted without

objection. She also testified on his own behalf. The official transcript (Tr.) was received on May 5, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 27 years old and unmarried. She holds the position of Network Engineer for a defense contractor. She 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 the single remaining allegation set forth in the SOR under this guideline.¹ (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated April 17, 2013; May 14, 2014; March 8, 2016; and April 23, 2016; reflect that Applicant was at one time indebted to the creditor set forth in the SOR, in an amount totaling approximately \$60,000. (Government Exhibits 3, 4, 5 and 6.) Applicant is working to resolve the delinquent debt. She has been working for her current employer since May 2012.

Applicant was born and raised in the United States. To attend college, she took out a student loan with a bank in 2006. Her mother co-signed on the loan for her. (Applicant's Exhibit G.) Applicant attended University A from 2006 until 2008, and then left. She attended University B from 2010 to 2011. She then attended University C, an online school, from 2011 until she graduated in 2013. (See Government Exhibit 1.) Applicant stated that the tuition for University A became due about six months after she left the university or six months after she graduated. In any case, at that time, she was not employed and could not afford to make the payments on the loan. Applicant became indebted to a creditor for a student loan that was placed for collection in the approximate amount of \$60,019. In 2011, the loan was sold to another lender. (Applicant's Exhibit H.) In 2011, Applicant was earning money and could afford to make small payments on the student loan. At that time, she set up an automatic payment arrangements, and started paying off the loan. (Tr. p. 32.) As her earnings have increased, she has increased the amount of her loan payments. Since April 2015, she has been making loan payments of \$350 a month. (Applicant's Exhibits B and C.) In December 2015, her automatic loan payments stopped. She testified that she has the

¹ The Government withdrew allegation 1.a. of the SOR. (See Tr. pp. 21 -22.)

means, ability, and intention to continue paying her student loans until they are resolved. Applicant also provided evidence of the fact that there is another student loan, not included in the SOR, that Applicant is paying on that is in current status that she plans to continue to resolve

Applicant explained that when her mother filed Chapter 13 bankruptcy and included the debt in the bankruptcy, Applicant's automatic payments stopped. Applicant indicates that her mother has agreed to resolve the debt through the bankruptcy. (Applicant's Exhibits D and E.) In the event that the debt is not paid through her mother's bankruptcy, Applicant plans to resume her automatic payment schedule, and continue paying the debt until it is completely resolved.

Applicant's monthly budget indicates that she currently earns about \$75,000 annually before taxes. After paying all of her regular monthly expenses, Applicant has about \$1,377 leftover in discretionary funds per month. (Applicant's Exhibit F.)

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 obligations.

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;
- 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 adverse to an applicant 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 excessive financial indebtedness that 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 continued 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 Applicant has had excessive financial indebtedness (Guideline F), and the totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline F of the SOR.

The evidence shows that Applicant's delinquent student loan has almost doubled in the amount owed over the years. She originally borrowed about \$33,000, and now due to penalties and interest, owes approximately \$60,000. Since becoming gainfully employed she has shown a history of payments that demonstrates sound mitigation. She set up an automatic payment arrangement to resolve the debt. Recently that automatic payment arrangement was interrupted because her mother filed for Chapter 13 and included the student loan debt. Applicant's mother now plans to resolve the debt. In the event that it is not resolved through her mother's bankruptcy, Applicant will resume the automatic payment arrangement she has previously set up with the creditor. She also understands that going forward, she must be responsible in handling her finances

Applicant has submitted documentary evidence to support the fact that since becoming gainfully employed, she has been working to resolve her student loan debt. This compelling documentary evidence shows that she has acted reasonably and responsibly. She has shown good-faith by repaying her financial obligation, and

resolving her financial indebtedness. There is sufficient evidence of financial rehabilitation. Considering all of the evidence, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

In regard to 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*, are also applicable. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Since she has been gainfully employed Applicant has been paying off her student loans. Her conduct demonstrates that she is and has been reasonable and responsible. She has made a good-faith effort to resolve his debts and has demonstrated honesty and trustworthiness.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports a whole-person assessment of good judgment, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in her everyday life to adequately protect the Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this Applicant has demonstrated that she is sufficiently trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find for Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that Applicant has overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For Applicant.

Subpara. 1.b.: For 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 Applicant.

Darlene Lokey Anderson
Administrative Judge