



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



In the matter of:)	
)	
)	ISCR Case No. 15-03567
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Ryan C. Nerney, Attorney At Law, The Edmunds Law Firm

January 20, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing, (e-QIP) on April 23, 2013. (Government Exhibit 1.) On March 24, 2016, 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 April 8, 2016, and she requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on June 27, 2016. A notice of hearing was issued on August 12, 2016, scheduling the hearing for September 13, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6 which were admitted without objection. Applicant called four witnesses to testify. Applicant presented twenty exhibits, referred to as Applicant's Exhibits A through T,

which were admitted without objection. She also testified on her own behalf. The record remained open until close of business on September 27, 2016, to allow the Applicant to submit additional supporting documentation. Applicant submitted eleven Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits U through EE, which were admitted without objection. The official transcript (Tr.) was received on September 23, 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 47 years old and unmarried with no children. She has an MBA degree in Technical Management. She holds the position of Contract Management Professional 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 each of the allegations set forth in the SOR, except 1.a., 1.b., 1.c., and 1.j., under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 8, 2013; March 26, 2015; and May 27, 2016, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$115,000, which includes two federal tax liens for \$45,000. (Government Exhibits 3, 4 and 5.) Applicant has been working for her current employer since July 2009. She is currently working to resolve each of the delinquent debts.

Applicant has a history of excessive financial indebtedness. Among her debts are delinquent taxes and liens, student loans, cellular telephone and cable bills, medical bills and other miscellaneous debts. Applicant explained that a series of unexpected unfortunate life circumstances occurred that primarily caused her financial demise.

From 1994 through 2001, Applicant attended college where she obtained her Bachelor's and Master degrees. (Applicant's Exhibit K.) Applicant obtained student loans to attend college. In January 1999, Applicant became the sole care-giver for her half-brother who was diagnosed with a stage 4 brain tumor. Her brother had no job or insurance and was unable to support himself. Furthermore, he could no longer walk and take care of himself. Applicant moved him from out of state to live near her and provided him with an apartment and basic living expenses. She also provided him with emotional support. During this period, she deferred her student loan payments to help

her brother out. He died in March 2000. At that time Applicant was employed elsewhere and was not earning what she is now. Applicant had to pull money from her retirement account to help pay for her brother's expenses. In February 2005, Applicant became the sole provider for her mother who was diagnosed with lung cancer. Applicant provided her with about \$1,200 monthly to provided for her living expenses and health insurance. Applicant's mother died in September 2006. Applicant had to use money from her retirement to help pay for her mother's expenses, including funeral and related expenses. In July 2009, Applicant was laid off from her job and did not work for a year. In July 2010, she was rehired at her current position. These life events set her back financially and her own bills became delinquent. Over the past nine years, she has been working to clean up her credit. After receiving the SOR, she hired a money management counseling agency to assist her in getting her debts resolved sooner.

The following debts listed in the SOR became delinquent.

1.a. A delinquent student loan debt was placed for collection in the approximate amount of amount of \$33,936. Applicant's student loan has been transferred to another creditor, and consolidated with another student loan for payment. She has brought them current, and is making a monthly payment of \$318 toward the debt. (Applicant's Exhibits A and P.)

1.b. Another delinquent student loan debt was placed for collection in the approximate amount of \$32,661. Applicant's student loan has been transferred to another creditor and consolidated with another student loan for payment. She has brought them current, and is making a monthly payment of \$318 toward the debt. (Applicant's Exhibits A and P.)

1.c. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$999. This was for two cable boxes that Applicant did not timely return, but she did return them, and the creditor erroneously thought she had not. (Applicant's Exhibit Q.) The matter is resolved.

1.d. A delinquent credit card debt was placed for collection in the approximate amount of \$923. Applicant first learned of the debt in April 2016 and settled the account for \$630. (Applicant's Exhibit D.)

1.e. A delinquent debt for cable services was placed for collection in the approximate amount of \$259. Applicant first learned of the debt in April 2016 and paid it in full. (Applicant's Exhibits B and Y.)

1.f. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$51. Applicant has resolved the debt in full. (Applicant's Exhibit Z.)

1.g. and 1.h. Two delinquent Federal tax lien were entered against the Applicant in June 2006 in the approximate amount of \$34,961; and in May 2010 in the approximate amount of \$10,091. Applicant explained that this occurred when she prematurely

withdrew \$35,000 from her retirement account. Applicant has been making payments of \$450 monthly through an installment agreement she started in 2002. When she was laid off, she had to stop making payments, which accrued additional cost of penalties and interest. Since 2002, she has only missed three payments due to deaths in her family and her job lay-off. Recently, Applicant was able to sell some mineral rights that she inherited. All of her federal taxes are paid, except for \$60. She plans to pay the \$60. Both liens have now been released. (Applicant's Exhibits E, F, G, R, and BB and CC.)

1.i. A delinquent debt was charged off in the approximate amount of \$537. Applicant has resolved the debt. (Applicant's Exhibit X.)

1.j. A delinquent debt owed to a city was charged off in the approximate amount of \$98. This was a parking ticket that Applicant was not aware of until she saw her credit report in April 2016. The debt has been resolved (Tr p. 93, and Applicant's Exhibits C and S.)

1.k. A delinquent debt was placed for collection in the approximate amount of \$278. Applicant contacted the creditor and was told that she does not owe the debt. If at some point it is determined that she does, she will immediately pay it. (Tr. p. 94.)

1.l. A delinquent debt was placed for collection in the approximate amount of \$221. Applicant contacted the creditor and was told that she owed the debt. She has paid the debt off. (Applicant's Exhibit DD.)

1.m. A delinquent debt was placed for collection in the approximate amount of \$178. Applicant has paid the debt off. (Applicant's Exhibit DD.)

1.n. A delinquent debt was placed for collection in the approximate amount of \$40. Applicant has paid the debt off. (Applicant's Exhibit EE.)

1.o. A delinquent debt was placed for collection in the approximate amount of \$32. Applicant has tried to find out how to pay the debt but has been unsuccessful. She states that when she finds out who to pay, she will pay the debt. (Tr.p. 98.)

Applicant's financial situation is now current and stable. She earns \$123,000 annually, which is more than enough to satisfy her financial obligations. She has \$1,000 in her savings account and \$58,000 in her retirement account. She has moved in with her boyfriend, which has cut her household expenses in half. She sold the property she inherited, which allowed her to pay off her back taxes. She has received financial counseling, and now works a budget that she follows every month. (Applicant's Exhibits H and T.) She plans to now work on growing her savings. She hired an accountant to provide more tax advice for the future. When she had the massive amount of debt, she did not want to file bankruptcy, as she believed that it would adversely affect her security clearance.

Four witnesses testified on behalf of the Applicant. All of them agree that the Applicant should be granted a security clearance. They collectively expressed their respect for the Applicant based upon the fact that she has displayed responsibility, trustworthiness and good judgment at all times.

Applicant has received a number of accolades and awards of recognition for her excellent performance on the job. (Applicant's Exhibit J.) Letters of recommendation from professional associates, friends and coworkers of the Applicant indicate that she is responsible, honest and trustworthy. They recommend her for a security clearance. (Applicant's Exhibit N.) Performance evaluations of the Applicant from 2009 through 2015 are favorable. (Applicant's Exhibits L and V.)

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 was faced with some difficult life situations, which caused her excessive financial indebtedness. Caring for her terminally ill brother, followed by caring for her terminally ill mother, took not only emotional assistance but a great amount of financial assistance. Applicant then had to step up and take care of the business end of her mother's estate. During this time came more financial hardships, as Applicant was unemployed for a year before being rehired by her employer. Applicant has spent the past seven years trying to reestablish her financial credit by paying her taxes and student loans and resolving her delinquent debts. Her finances are now stable. Her expenses have been cut in half, she has received financial counseling, is working a budget, and understands that going forward, she must always live within her means and be responsible in handling her finances.

Applicant has submitted substantial documentary evidence to support the fact that she has paid her debts. This compelling documentary evidence shows that she has acted reasonably and responsibly. She has shown good-faith by repaying his financial obligations, 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. Applicant has worked in the defense industry for the past eight years and has never incurred a security violation. She has received numerous accolades, favorable letters of recommendation and performance evaluations that reveal the kind of person she really is. Applicant has the respect of her friends and professional colleagues. Although she was confronted with some difficult challenges in the past, she confronted them with grace, dignity, nobility and courageousness. At all times, she continued to display reasonableness and responsibility. She has also made a good-faith effort to resolve her debts. She has clearly 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.a.: For Applicant.

Subpara. 1.b.: For Applicant.

Subpara. 1.c.: For Applicant.

Subpara. 1.d.: For Applicant.

Subpara. 1.e.: For Applicant.

Subpara. 1.f.: For Applicant.

Subpara. 1.g.: For Applicant.

Subpara. 1.h.: For Applicant.

Subpara. 1.i.: For Applicant.

Subpara. 1.j.: For Applicant.

Subpara. 1.k.: For Applicant.

Subpara. 1.l.: For Applicant.

Subpara. 1.m.: For Applicant.

Subpara. 1.n.: For Applicant.

Subpara. 1.o.: 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