



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04189

Appearances

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

June 17, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing, (e-QIP) on June 18, 2013. (Government Exhibit 1.) On December 7, 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 December 29, 2015, and requested an administrative hearing before a Defense Office of Hearings and Appeals administrative judge. This case was assigned to the undersigned Administrative Judge on March 28, 2016. A notice of hearing was issued on March 31, 2016, and the hearing was scheduled for April 25, 2016. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant called one witness and testified on her own behalf. She also presented

three exhibits, referred to as Applicant's Exhibits A through C, which were also admitted into evidence without objection. The official transcript (Tr.) was received on May 4, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 48 years old and unmarried. She has a twelfth grade education. She holds the position of Production Controller II for a defense contractor. She is seeking to obtain a security clearance in connection with this employment.

The Government opposes 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 Applicant is ineligible for clearance because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant admitted each of the allegations in the SOR set forth under this guideline. (See Applicant's Answer to SOR.) Credit reports of Applicant dated July 10, 2013; April 14, 2015; December 3, 2015; and April 23, 2016, reflect that Applicant was indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$12,000. (Government Exhibits 2, 3, 4 and 5.)

Applicant served in the United States Army for almost two years, from 1999 to 2001. She fell off a stairwell and had to have a hip replacement. She received an honorable discharge and disability benefits. Since June 2013, Applicant has worked for her current employer. She has held a security clearance since she started. She has never violated any security rules or regulations.

In July 2010, Applicant explained that she got very sick and was laid-off of her job. She had an infection in her lungs that put her in the hospital, and on life support for five days. As a result of her job lay-off she no longer had medical insurance to cover her medical bills. Each of the medical accounts set forth in the SOR became delinquent. 1.a. A delinquent medical account was placed for collection in the approximate amount of \$653. This debt has been paid. (See Tr. p. 27, and Applicant's Exhibit A.) 1.b. A delinquent medical account was placed for collection in the approximate amount of \$2,603. This debt has been paid. (See Tr. p. 27, and Applicant's Exhibit B.) 1.c. A delinquent medical account was placed for collection in the approximate amount of \$8,861. This debt has been resolved. (See Tr. p. 28, and Applicant's Exhibit C.) Applicant's mother handles her finances and she gave the Applicant the money to pay off her debts. Applicant's mother is going to reimburse herself by selling some of the Applicant's stocks.

Applicant's current net salary is about \$2,400 monthly. She also receives almost \$400 monthly in disability. After she pays her monthly expenses, she breaks about even. She has no other expenses. She has stocks and bonds and a retirement account. She now has full medical coverage through the Department of Veteran's Affairs.

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 that 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 a reasonable and logical basis in the evidence of record. The judge cannot draw inferences or conclusions based on evidence that 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 circumstances beyond the Applicant's control caused her financial indebtedness. In 2010, she fell seriously ill, was hospitalized, placed on life support, and subsequently laid-off of her job. This caused her to lose her medical insurance and become delinquent on her medical bills. Since June 2013, she has worked for her current employer. Applicant borrowed the money from her mother to pay her debts. She has paid off each of the creditors listed in the SOR and has not incurred any new debt that she cannot afford to pay. She plans to reimburse her mother with money she receives for selling her stocks. Applicant has shown good judgment. 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. She has made a good-faith effort to resolve her debts and has demonstrated honesty and trustworthiness.

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, 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, 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.

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. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge