



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



In the matter of:

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) ISCR Case No. 15-07634
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Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: *Pro se*

February 3, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing, (e-QIP) on January 22, 2015. (Government Exhibit 1.) On May 22, 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 June 22, 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 August 8, 2016. A notice of hearing was issued on August 30, 2016, scheduling the hearing for October 12, 2016. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 through 4 which were admitted without objection. Applicant presented twenty-one 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 October 26, 2016, to allow the Applicant to submit additional supporting documentation. Applicant submitted six Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits U through Z, which were admitted without objection. The official transcript (Tr.) was received on October 20, 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 45 years old and is married with two children. She has a Bachelor's of Science degree in Business Management. She holds the position of Secretary for an administrator on a Navy base. 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.c., under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated February 20, 2015; March 10, 2015; and April 20, 2016, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling in excess of approximately \$37,000, which includes delinquent federal taxes, credit cards, and other miscellaneous debts. (Government Exhibits 2, 3 and 4.) Applicant began working for her current employer in April 2015, and was placed on administrative leave in April 2016 pending a decision in this matter.

Applicant encountered a series of life circumstances that caused unexpected financial hardships. She explained that she was a single mother supporting two children for many years before she was married in 2011. With no malicious intent, she made an error in her income tax returns filings, and as a result, incurred significant Federal tax debt for tax years 2010, 2011 and 2012. Her husband, who had been working in the construction industry, had sporadic work, and was eventually laid off. He later suffered serious health issues, requiring hospitalization and had four stents placed last year. (Applicant's Exhibit M.) He only returned to work about three months ago. Applicant's daughter suffers from a terminal illness. At the age of five, she underwent a liver transplant. She is now twenty years old and disabled, lives with the Applicant and is in need of another transplant. (Applicant's Exhibit N.) During Applicant's daughter's first liver transplant, Applicant had to stop working to take care of her. Although Applicant

received some county assistance, it was not enough to cover the bills. In 2001, she filed for bankruptcy protection.

In June 2016, Applicant hired a creditor counseling agency to assist in resolving her debts. She has also enrolled in a 13-week financial class that she has been attending. Her former supervisor is her financial counselor. Applicant has contacted each of her creditors and set up payment plans that she is following. She is, and has been, working diligently to resolve her indebtedness.

The following debts listed in the SOR became delinquent.

1.a. and 1.b. Two delinquent student loan debts were placed for collection in the approximate amount of \$13,685 and \$12,503 respectively. Applicant has consolidated the two loans, now owes a total of \$26,188, and has brought the debt current. She is now making a monthly payment of \$102.75 until the debt is resolved. (Applicant's Exhibit A and Tr. p. 31.)

1.c. A delinquent account was placed for collection in the approximate amount of \$501. Applicant has disputed the debt with the three credit reporting agencies, and they determined that the debt cannot be validated. The debt has been removed from her credit reports. (Applicant's Exhibit B and Post-Hearing Exhibit U.)

1.d. A delinquent debt was charged off in the approximate amount of \$316. This old electric bill was paid off on June 16, 2016. (Applicant's Exhibit C.)

1.e. and 1.k. Applicant contends that these allegations concern the same debt. A delinquent credit card debt was charged off in the approximate amount of \$1,802. Applicant is making \$20 monthly payments and has reduced the debt to about \$600. The account was recently settled for \$339.06. (Applicant's Exhibit D, Post Hearing Exhibit V, and Tr. p. 41.)

1.f. A delinquent credit card debt was charged off in the approximate amount of \$510. Applicant has been making payments of \$5 per month since last March, agreed to by the creditor, until she is in better financial standing. (Tr. p. 42.) She plans to pay off the debt with her pension money next month. (Applicant's Exhibit E and Post-Hearing Exhibit W.)

1.g. and 1.i. Applicant contends that these allegations concern the same debt. A delinquent credit card debt was charged off in the approximate amount of \$1,042. Applicant is making monthly payments of \$25.24 and plans to pay off the debt with her pension money next month. (Applicant's Exhibit F and Post Hearing Exhibit X.)

1.h. A delinquent credit card debt was placed for collection in the approximate amount of \$2,660. Applicant was making payments of \$40 per month, but this was reduced to \$20 monthly agreed to by the creditor, until her financial standing improves.

(Applicant's Exhibit G.) Applicant plans to pay off the debt with her pension money next month. (Applicant's Post-Hearing Exhibit Y.)

1.j. A delinquent credit card debt was placed for collection in the approximate amount of \$1,338. Applicant is making payments of \$27.31 monthly, agreed upon by the creditor, until she resolves the debt. (Applicant's Exhibit I.) Applicant plans to pay the debt off in full with her pension money next month. (Applicant's Exhibit Z.)

1.i. A delinquent account that was placed for collection in the approximate amount of \$315. Applicant paid off the account in October 2015. (Applicant's Exhibit J and Tr. p. 51.)

1.m. A delinquent gas bill was placed for collection in the approximate amount of \$189. Applicant has paid the debt in full. (Applicant's Exhibit K and Tr. p. 53.)

1.n. Delinquent Federal taxes owed in the approximate amount of \$403.97 for tax year 2010 was paid on March 7, 2016. Applicant originally owed \$12,000 and has now resolved all of her delinquent tax debt. (Applicant's Exhibit L.)

Applicant is receiving unemployment benefits of \$900 every two weeks, but she is using it wisely. Although making small payments, she is paying her debts. (Applicant's Exhibit Q.) Her financial situation is now current and stable. Her husband is now employed and working full time, earning \$409.52 weekly, now including over time, which will help improve Applicant's financial standing. (Applicant's Exhibit R.) A letter from the Applicant's former supervisor, who has also been serving as the Applicant's financial coach states that she has been assisting the Applicant in putting her financial affairs back in order. (Applicant's Exhibit O.)

Applicant also took advantage of a lump-sum early pension available to her from her previous employer in the amount of \$23,878.14, which she plans to use next month to pay down her debt even more. (Applicant's Exhibit S.) Applicant submitted a copy of her payment plan that she intends to follow to completely resolve all of her debt. (Applicant's Exhibit T.)

A letter from the Applicant's previous employer indicates that if her security clearance is reinstated, she will be extended a job offer and is subject to rehire. She will also have her medical insurance reinstated immediately. (Applicant's Exhibit P.)

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 even though Applicant has been faced with some very difficult life situations, causing her financial indebtedness, she has addressed each and every one of her debts in an effort to get them resolved. She has paid off all of her back taxes, and is making payments to each of her creditors in some form or fashion that has been agreed upon between the parties. She is also taking her pension early, to use to pay off her remaining debt. She has shown enormous responsibility. When faced with turmoil and extreme hardship, instead of falling apart, or giving up, Applicant has demonstrated that she can properly confront her financial problems and get them resolved. In every aspect, she continues to show responsibility.

In addition, Applicant has submitted substantial documentary evidence to support the fact that she is paying her debts. This compelling documentary evidence shows that she has acted reasonably and responsibly. She has shown good-faith by repaying her 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 demonstrated that her actions are reasonable and responsible. She has enrolled in financial classes to help her with budgeting, paying bills and savings. Although she has been confronted with some difficult challenges, she confronted them with grace, dignity, nobility and courageousness. At all

times, she has continued to display reasonableness and responsibility, and has made a good-faith effort to resolve her debts. She shows 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.

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