



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



In the matter of:)
)
) ISCR Case No. 15-08004
)
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Department Counsel
For Applicant: *Pro se*

March 28, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing, (e-QIP) on April 21, 2015. (Government Exhibit 1.) On February 4, 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 in writing on February 17, 2016, and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to Applicant on or about March 31, 2016. Applicant received the FORM on April 11, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a reply to the FORM dated April 26, 2016. This case was

assigned to the undersigned on December 13, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 57 years old and is divorced with two adult children. She has a bachelor's degree. She holds the position of Program Management Support 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 under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated May 12, 2015; and January 12, 2016, reflect that Applicant was at one time indebted to each of the creditors set forth in the SOR, in an amount totaling approximately \$17,316. (Government Exhibits 4 and 5.) Applicant has been working for her current employer since April 2015. Applicant has held a security clearance from mid-2003 until March 2015 when it was suspended due to her financial problems. She is currently working to resolve each of the delinquent debts.

Applicant has a history of excessive financial indebtedness. Among her debts are delinquent car repair bills, medical bills, household repairs, and other miscellaneous debts. Applicant explained that a series of unexpected, unfortunate life circumstances occurred that primarily caused her financial demise.

In 2002, after 21 years of marriage, Applicant and her husband divorced. Applicant needed to go back to work, and had two children in school she needed to help support. Other unexpected life events happened, a car accident, multiple car repairs, medical bills, household repairs, and a death in the family that caused her to lean on credit cards to temporarily resolve the issues. Applicant explained that she has not lived lavishly. She has purchased a less expensive house, and she does not go on vacations. (Applicant's Response to FORM, Exhibit 9.) When her car would no longer function, she purchased a used one. (Applicant's Response to FORM, Exhibit 2.) She does not participate in a retirement plan because she has elected to use her current available funds to pay her debts. Her children have recently left for college. She is helping them with college expenses, and she can no longer claim them as tax deductions. This has required her to pay additional taxes up to approximately \$2,500 per year. (Applicant's Response to FORM, Exhibit 1.) Due to these payments, several

of her creditors were put aside so that funds would be available to pay the Government. Applicant states that she has made payments toward these debts over the years. She began to fall behind in 2012, after filing her Federal income tax return. Since August 2013, she has paid off six creditors. She is currently working to get automatic payments set up to start on March 15, 2016, that will continue on the 15th of each consecutive month to begin repayment of the debts listed in the SOR. Applicant's financial spreadsheet shows that all of her debts will be paid off by the end of 2017. (Applicant's Exhibit 7.)

1.a. A delinquent medical bill was placed for collection in the approximate amount of amount of \$105. Applicant paid the debt on February 16, 2016. She has attached the receipt to verify payment. (Applicant's Response to FORM, Exhibit 8.)

1.b., and 1.f. Two delinquent credit card bills owed to the same bank were charged off in the amounts of \$3,197, and \$3,251. On February 12, 2016, Applicant entered into a monthly payment agreement to cover both debts that requires she make a payment of \$650 that day, and then for six months following she makes a payment of \$200 each month. At the end of the period, an evaluation will be made to determine if she can pay more toward the debt, or if the scheduled \$200 monthly payments should continue. Applicant claims that the collection agency handling the matter states that the debt set forth in 1.f. is now only \$2,951. (Applicant's Response to FORM, Exhibits 5, 7 and 8.)

1.c. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$6,571. Applicant states that the debt was originally held by Home Depot where she purchased two air conditioning units at a previous residence. The debt remains owing. (Applicant's Response to FORM, Exhibits 5, p.16 and 7.)

1.d. A delinquent credit card debt was placed for collection in the approximate amount of \$3,085. Applicant states that this was used for multiple car repairs made between 2002 and 2016. On February 16, 2016, a payment agreement of \$155 per month for 18 months was set up on line with the collection agency. Applicant submitted a letter verifying the agreement. (Applicant's Response to FORM, Exhibits 5, p. 17 and 7.)

1.e. A delinquent debt owed to Sears was placed for collection in the approximate amount of \$1,107. Applicant explained that this was used to purchase various necessities for her family and household maintenance. She planned to begin payments no later than May 16, 2016, after paying her income tax that she owes. (Applicant's Response to FORM, Exhibit 5, p. 14 and 7.)

Applicant has set up a financial budget that she is following. She states that as each debt gets paid off, she will increase the amounts going to each of the other accounts. Her children will soon be financially stable enough to take on some of their student loan burden, which will free up additional funds that she will use to pay toward her debts. (Applicant's Response to FORM, Exhibit 6.)

A letter of reference from Applicant's long-time friend indicates that Applicant is considered to be a person of good moral character. She is not a person with chronic financial issues due to irresponsibility. Applicant has had many financial challenges over the last ten years, but she has worked diligently and gone without niceties in order to pay off her debts. She is considered to be honest and trustworthy and is highly recommended for a security clearance. (Applicant's Response to FORM, Exhibit 4.)

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 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. First a divorce, then, the adjustment to working and supporting herself and her children. The many unexpected expenses, such as car repairs, a car accident, medical bills, household maintenance costs, and a death in the family caused more debt. Applicant has spent the past two and a half years trying to re-establish her financial credit by paying her debts, and her taxes, helping her children with their college expenses, and living frugally and within a budget. Applicant's excessive indebtedness was not due to negligence. The conduct fell within a particular period of time, and has not been continued. And, finally, Applicant has shown a very definitive plan to resolve the debts, and is working toward that goal.

Applicant states that her finances are now stable. She is currently following a financial budget, and understands that going forward she must always pay her debts in a timely manner, and live within her means, thus, demonstrating that she is financially responsible.

Applicant has submitted substantial documentary evidence to support the fact that she has is currently paying her debts. The receipts, payment plans, and credit records are compelling documentary evidence that shows that she has acted reasonably and responsibly. She has shown good-faith by working toward 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 the respect of her friends and professional colleagues. Although she was confronted with some difficult life challenges in the past, she confronted them with dignity and courageousness. At all times, she continued to display reasonableness and responsibility. She continues to make 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.

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