



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04933

Appearances

For Government: Adrienne Strzelczyk, Department Counsel

For Applicant: *Pro se*

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Questionnaire for Investigations Processing, (E-QIP) on February 10, 2013. (Government Exhibit 2.) On March 1, 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 in writing on March 10, 2015, 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 June 8, 2015. Applicant received the FORM on June 11, 2015. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted no response to the FORM. This case was assigned to the

undersigned on August 20, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 58 years old and divorced. She has an Associate's Degree from a Community College and holds the position of Logistician 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 four allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) A Credit Report of the Applicant dated February 22, 2015, 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 \$35,316. (Government Exhibit 4.) Applicant has worked for a government contractor for over 40 years and has never incurred a security violation. She has been employed with her current employer since December 2012, and has held a security clearance since at least 2000 without incident.

Applicant states that circumstances beyond her control caused or greatly contributed to her financial problems. In July 2003 Applicant was going through a divorce. She could not afford to make the house payment by herself, and so she applied for and obtained a loan modification on her home. Her intention was to get the mortgage company to make the loan more affordable due to the loss of her husband's income. In 2007 her domestic partner was diagnosed with cancer and he could no longer work. At this time, Applicant was also the caretaker for her mother who had terminal cancer. Applicant's monthly income was substantially reduced. In April 2013 Applicant's mother died of cancer, and in May 2013 her domestic partner died of cancer. Applicant further explained that her daughter was in an abusive relationship and needed a place for herself and her four children to live. Applicant allowed her daughter to move into a vacant apartment that Applicant had in order to keep her safe and protected. Applicant did not receive any rental income from her daughter during this period that further reduced Applicant's income and her ability to pay her bills.

Applicant became indebted to three creditors for delinquent accounts totaling approximately \$35,316. 1.a., a delinquent account placed for collection by a creditor in the amount of \$152 was outstanding. A repayment of \$100 was agreed upon between

the parties and the Applicant has paid the debt. Applicant submitted a copy of the check for proof of payment. (See Applicant's Answer to SOR, attachment 1.)

1.b. A delinquent mortgage account owed to a lender for a deficiency balance of \$34,210 was at one time delinquent. Applicant states that her current mortgage is not held by this lender and the debt alleged was never brought to her attention. Furthermore, the debt is not reflected on her most recent credit report. Applicant has never been notified about the debt by mail or phone calls for eight years. Her house was not foreclosed upon and in fact she still lives in the home. She claims that she does not owe the debt. It is possible that when her home mortgage was modified, the deficiency balance was placed on the back end of the loan. (See Applicant's Answer to SOR, attachment 2.)

1.c. A delinquent credit card debt in the amount of \$954 was placed for collection and was outstanding. Applicant set up a payment plan with the creditor and paid off the debt over a period of six months by payments of \$79.52 monthly. Applicant submitted proof of payment showing the debt has been paid in full. (See Applicant's Answer to SOR, attachment 3.)

1.d. In October 2007, Applicant filed for Chapter 13 as a strategy to get the bank to work with her to accomplish her mortgage loan modification and payment arrangements with other creditors. Applicant wanted to keep her house and in order to do so, she needed to modify her mortgage loan. In November 2007 Applicant obtained the loan modification, and dismissed the Chapter 13. Before the divorce, the mortgage loan was based upon both her and her husband's income. After the divorce, the loan modification was based upon her income, which made a significant difference in the payment required. Applicant provided a copy of the loan modification which indicates that her adjustment in the payment is reflected by a principal forgiveness in total amount of \$184,384.11. (Government Exhibit 5.)

Applicant recently accepted a new job with an increase in salary. All of her financial accounts are current and she continues to live within her means. She states that her employer is pleased with her work and her co-workers find her to be extremely reliable and trustworthy.

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 circumstances beyond her control primarily caused her financial difficulties. Namely, a divorce, followed by several deaths in the family, and problems with her daughter's domestic partner that caused Applicant to spend money that she would otherwise have used on her bills. She became delinquently indebted to several creditors. Since things have stabilized, she has paid off her delinquent debts, and modified her mortgage loan to become affordable. She has submitted compelling documentary evidence showing that she has acted responsibly and in good-faith to repay her financial obligations, established a meaningful track record of repayment or otherwise has a substantiated basis to dispute the legitimacy of her delinquent debts. 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*; and 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 forty years and has never incurred a security violation. 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 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 the Applicant under Guideline F (Financial Considerations.)

On balance, it is concluded that the 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.

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