



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04956

Appearances

For Government: Eric Borgstrom, Department Counsel

For Applicant: *Pro se*

October 29, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) dated May 19, 2014. (Government Exhibit 3.) On December 8, 2014, 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) to the Applicant, which detailed reasons why the DoD 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 the 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 December 30, 2014, 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 22, 2015. Applicant received the FORM on June 29, 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 September 1, 2015. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

Applicant is 47 years old, and is married with three sons. She has a high school diploma and a Certificate of Completion from a technical school. She holds the position of Administrator for a defense contractor, and 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 has a history of financial indebtedness. There are twelve delinquent debts set forth in the SOR that total in excess of \$11,000. Applicant admitted allegations 1.c, 1.d., 1.f., 1.g., 1.h., 1i., 1.j., 1k. and 1.l.; and denies allegations 1.a., 1.b., and 1.e. Applicant has been working for her current employer on a full time basis since March 2010.

Applicant's credit reports dated June 5, 2014; and February 19, 2015, which includes information from all three credit reporting agencies, reflect that she is indebted to each of the creditors set forth in the SOR. (Government Exhibits 4 and 5.)

1.a., a delinquent debt owed to creditor for an account in the approximate amount of \$6,744 remains owing. Applicant denies the debt because she believes her medical insurance company should have paid it. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated June 5, 2014. (Government Exhibit 5.)

1.b., a delinquent debt owed to creditor for an account in the approximate amount of \$1,561 remains owing. Applicant remembers that the debt involved a medical procedure for her son. She denies the debt because she believes the insurance should have paid it. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated June 5, 2014. (Government Exhibit 5.)

1.c., a delinquent debt owed to creditor for an account in the approximate amount of \$1,216 remains owing. Applicant remembers that the debt involved a medical procedure for her son. She denies the debt because she believes the insurance should have paid it. The is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.d., a delinquent debt owed to creditor for an account in the approximate amount of \$664 remains owing. Applicant admitted the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.e., a delinquent debt owed to a creditor for an account in the approximate amount of \$628 remains owing. Applicant denied the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated June 5, 2014. (Government Exhibit 5.)

1.f., a delinquent debt owed to a creditor in the approximate amount of \$218 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.g., a delinquent debt owed to a creditor in the approximate amount of \$92 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.h., a delinquent debt owed to a creditor in the approximate amount of \$81 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.i., a delinquent debt owed to a creditor in the approximate amount of \$76 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.j., a delinquent debt owed to a creditor in the approximate amount of \$66 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.k., a delinquent debt owed to a creditor in the approximate amount of \$65 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

1.l., a delinquent debt owed to a creditor in the approximate amount of \$29 remains owing. Applicant admits the debt. The debt is listed as having been placed for collection and remains unpaid on Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

Two new delinquent debts owed to creditors totaling approximately \$1,062 were placed in collection in late 2014, and remain unpaid according to Applicant's credit report dated February 19, 2015. (Government Exhibit 4.)

According to Applicant answer, both her husband and her sons were laid off from their jobs, and she was at one time, and may still be, the only one working in the household. There is no further information as to when and how long they were unemployed. She has not provided any specific information about any circumstances beyond her control, which could have contributed to her financial problems.

There is no evidence of any kind to show that the Applicant has resolved any of her delinquent debts set forth in the SOR. There is however, evidence to show that she has incurred new delinquent debt in 2014. Furthermore, there is no evidence in the record to show that she has or can live within her means, using a budget. There is no evidence as to what her monthly income is, or what her monthly expenses are, to show that her financial situation has stabilized and or improved.

As noted above, in regard to the twelve delinquent debts set forth in the SOR, Applicant has failed to submit any documentary evidence to show that she is addressing the debt. It is her burden to show that she has either paid them, settled them or resolved them in some fashion. She provides no explanation with respect to the final disposition of these debts nor any supporting documentation that any of them have been resolved. Without more, Applicant is still held responsible for the debts.

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:

None.

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 and surrounding circumstances;
- 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 . . . 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 instances of financial irresponsibility, which 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 the Applicant has been financially irresponsible (Guideline F). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Applicant states that her husband and sons were laid off from their jobs, and she is unable to pay her delinquent debts. Other than that statement, she has not provided any specific information about any circumstances beyond her control which could have contributed to her financial problems. However, she claims that she has paid off or resolved her largest debt in the amount of \$6,700. If she were able to get the insurance company to cover the expense of the debt, it would have been wise to provide a copy of the payment or confirmation from the creditor confirming that the debt has been resolved. She did neither. In fact, there is no evidence in the record to show how she could have resolved the debt. At the present time, she remains delinquently indebted to each of the twelve creditors set forth in the SOR, totaling approximately \$11,000. In regard to these twelve, there is no evidence of any efforts to repay any other debts on her own, be it prior to or after receipt of the SOR. There is no evidence of even an attempt to pay the smallest of the debts, which is only \$29. In the absence of documentary evidence submitted in response to this FORM to show that Applicant has been able to attain some resolution on her delinquent debts and establish a track record of debt repayment, this concern must be decided against her in evaluating her suitability to have access to classified information.

Applicant's history of excessive indebtedness, without sufficient mitigation, demonstrates a pattern of unreliability and poor judgment. Applicant failed to provide proof of payment, receipts, or any documentation to demonstrate that she has, can, or will resolve her delinquent debts. Furthermore, there is nothing in the record to show that Applicant can live within her means. Without more, the Applicant has failed to establish that she is fiscally responsible. There is no evidence that she has received credit counseling to help her structure a budget that she can live within and pay her bills too. There is nothing in the record to show that her finances are under control.

Under the particular circumstances of this case, Applicant has not met her burden of proving that she is worthy of a security clearance. She has not sufficiently addressed the delinquent debts in the SOR. Thus, it cannot be said that she has made a good-faith effort to resolve her past due indebtedness. She has not shown that she is or has been reasonably, responsibly or prudently addressing her financial situation. Applicant has not demonstrated that she can properly handle her financial affairs or that she is fiscally responsible. Her debts are significant.

Assuming that Applicant demonstrates a history and pattern of fiscal responsibility, including the fact she has not acquired any new debt that she is unable to pay, she may be eligible for a security clearance sometime in the future. However, she is not eligible now. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Under 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. There is no evidence in the record to show that Applicant has done anything to resolve her debts. In fact, from what is presented, Applicant could benefit from intense financial counseling. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. 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, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented. It does not mitigate the negative effects of her history of financial indebtedness and the effects that it can have on her ability to safeguard classified information. On balance, it is concluded that Applicant has not overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1:		Against the Applicant.
Subpara.	1.a.	Against the Applicant.
Subpara.	1.b.	Against the Applicant.
Subpara.	1.c.	Against the Applicant.
Subpara.	1.d.	Against the Applicant.
Subpara.	1.e.	Against the Applicant.
Subpara.	1.f.	Against the Applicant.
Subpara.	1.g.	Against the Applicant.
Subpara.	1.h.	Against the Applicant.
Subpara.	1.i.	Against the Applicant.
Subpara.	1.j.	Against the Applicant.
Subpara.	1.k.	Against the Applicant.
Subpara.	1.l.	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge