



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-05242
)
Applicant for Security Clearance)

Appearances

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

June 30, 2015

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (E-QIP) on February 5, 2014. (Government Exhibit 1.) On December 16, 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 on January 13, 2015, and she requested an administrative hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge. This case was assigned to the undersigned Administrative Judge on March 12, 2015. A notice of hearing was issued on April 20, 2015, and the hearing was scheduled for May 19, 2015, transmitting by video-teleconference from Woodland Hills, California to Korea on May 20, 2015. At the hearing the Government presented five exhibits, referred to as Government Exhibit 1 through 5, which were admitted without objection. The Applicant presented one exhibit, referred to as Applicant's Exhibit A, which was also admitted into evidence without objection. She

also testified on her own behalf. The record remained open until close of business on May 27, 2015, to allow the Applicant to submit additional documentation. Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through D, which were admitted without objection. The official transcript (Tr.) was received on May 27, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 55 years old, and married with three adult children. She has an Associate's degree and is close to finishing her Bachelor's degree. She holds the position of Administrative Assistant 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.

Applicant admitted the allegations set forth in the SOR under this guideline. (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated February 22, 2014; September 19, 2014; and February 23, 2015, reflect that Applicant is indebted to each of the creditors set forth in the SOR. (Government Exhibits 2, 3 and 4.)

Applicant and her husband have been married for 29 years. Since 1999, Applicant's husband, who has always been the primary breadwinner for the family, suffered a number of serious medical problems. He had three open-heart surgeries and several stints were implanted in his heart. In 2005, he was diagnosed with colon cancer that required, among other things, reconstructive surgery to keep him alive. He is now in remission.

By 2009, Applicant's husband was successfully employed as a construction manager for a for a large department store chain. The Applicant was a secretary at a local hospital. At that time, they were comfortably able to manage their home and pay their bills. As the economy began to downturn, Applicant's husband was terminated from his employment. Their combined income went from slightly over \$100,000 annually to about \$40,000. Without a formal education, Applicant's husband found it difficult to find work. The lay-off resulted in him being out of work for over 6 months. To obtain employment, Applicant had to take a job out- of-state. At this point, the Applicant and her husband were confronted with maintaining two households, which proved to be impossible. They placed their home on the market, and moved to the

state where her husband was employed. Given the downturn in the housing market, they were unable to sell their house.

For over a year, the Applicant and her husband made numerous attempts to work with their mortgage lender to complete a loan modification. They even had potential renters who were willing to pay the full amount of the mortgage payments each month, but they denied the modification. Their house was ultimately foreclosed upon. Applicant hired legal counsel to determine whether there were available remedies against the lender for “dual tracking”¹ practices. (Applicant’s Post-Hearing Exhibit A.)

In 2010 Applicant’s husband was hired by as a government civilian employee. In December 2013, he was given the opportunity to work in Korea. He accepted the job and they moved. They left their family in the states in hopes of being able to resolve their delinquent debts faster, and put money away for savings.

As a direct result of her husband’s job lay-off, difficulties finding employment, and medical problems, Applicant’s bills became delinquent and owing. Realizing that their financial problems had grown beyond what they could handle, in June 2010, Applicant and her husband hired a Debt Management Company to help them responsibly pay down their debts. Applicant submitted a letter from the Debt Management Company, dated January 2015, that verifies their formal agreement. (See attachment to Applicant’s Response to SOR.) The agreement lists each of the consumer debts set forth in the SOR that are being paid on a regular monthly basis under the plan. (Tr. p. 33.) Applicant currently makes a monthly payment of \$690 that is distributed by agreement to each of her creditors on a monthly basis. This amount fluctuates based upon what Applicant can afford. For the past five years that she has been involved in the program, Applicant has never missed a payment. (Tr. p. 35.)

1.a. A delinquent debt owed to a bank on a mortgage account went into foreclosure, the deficiency balance on the house was \$225,488. Applicant tried to obtain a loan modification in order to keep the house, because at one time she had renters. The loan modification was not successful. She tried to sell the house, but nothing in the neighborhood was selling. A letter from Applicant’s attorney dated January 6, 2015, and an Order Confirming Sale filed December 17, 2014, indicates that in December 2014, the house was foreclosed upon, and proceeds from the sale of the house paid any deficiency balance. Applicant also submitted a copy of the IRS Form 1099A that they received. (See, attachment to Applicant’s Response to SOR, and Tr. pp. 31-33.)

1.b. A delinquent debt owed to a bank on a home equity account in the amount of \$34,792 was charged off by the creditor. The proceeds from the foreclosure sale of

¹ Dual tracking refers to a common bank tactic used when a borrower is in default and seeking a loan modification, the institution simultaneously pursues the foreclosure.

the house paid any monies owed on this account. (See, attachment to Applicant's Response to SOR, Tr. p. 32.)

1.c. A delinquent credit card account in the amount of \$13,005 was charged off by the creditor. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.d. A delinquent credit card account in the amount of \$7,953 was charged off by the creditor. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.e. A delinquent debt owed to a creditor in the amount of \$7,850 was placed in collections. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.f. A delinquent debt owed to a creditor in the amount of \$4,872 was charged off by the creditor. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.g. A delinquent debt owed to a creditor in the amount of \$3,081 was charged off by the creditor. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.h. A delinquent debt owed to a creditor in the amount of \$1,655 has been placed in collections. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.i. A judgment was filed against the Applicant in April 2010, for a delinquent credit card det in the amount of \$14,605. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.j. A delinquent debt owed to a bank in the amount of \$8,520 has been charged off by the creditor. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

1.k. A delinquent debt owed to a bank in the amount of \$1,374 was placed in collections. The account has been paid in full through the Debt Repayment Program. (See Applicant's Post-Hearing Exhibit D.)

1.I. A delinquent debt owed to a creditor in the amount of \$9,051 has been placed in collections. The account is now closed and Applicant is no longer incurring interest. The account is being paid through the Debt Repayment Program. (Applicant's Post-Hearing Exhibits A and D.)

Applicant's performance evaluation for the period from May 2014 through May 2015 reflects "satisfactory" ratings in every category. (Applicant's Post-Hearing Exhibit C.)

A letter of recommendation from the Dean of the university where Applicant used to work, indicates that Applicant is extremely well thought of. She is considered to be an individual with high integrity, a strong work ethic, and is a professional in everything she does. The Dean would like to hire her back if she could. Applicant is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibit B.)

Letters of recommendation from Applicant's sister, and a church friend attest to Applicant's hard-working nature, reliability, honesty, thoughtfulness, leadership qualities and professionalism. They recommend her for a security clearance. (Applicant's Post-Hearing Exhibit B.)

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 adjudication 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 that 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.

The evidence shows that the Applicant’s financial problems were largely beyond her control, and she has acted responsibly under the circumstances. In 2009, her husband lost his job, and struggled finding suitable employment until recently. To survive, during his unemployment, Applicant fell behind on her mortgage, tried to get a loan modification, which was denied, and her house was eventually foreclosed upon. During this time, she used credit cards to pay for necessities. As a result, she accumulated delinquent debt she could not afford to pay. In 2010, she hired a Debt Management Company to assist her in resolving her debts. Since then she has never missed a payment under the plan, and she has been consistently whittling down her delinquent balances. Her financial situation has greatly improved and she continues to work toward resolving her delinquent debts.

Under the circumstances, Applicant is making a good-faith effort to resolve her debts. She has acted responsibly and reasonably under the circumstances. She understands that she must remain fiscally responsible if she is to hold a security clearance. She has not incurred any new debt that she cannot afford to pay, and is working to resolve her remaining debts. She has set up a budget that she is following to live within her means and pay off her bills. There is clear evidence of financial rehabilitation. Applicant must follow through with resolving her debts. In the event that she does not continued to resolve them in a systematic manner, or seek other appropriate legal relief, her security clearance will be in immediate jeopardy. Applicant has 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. 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* also apply. Accordingly, I find for the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole-person concept" in evaluating the 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 good judgment, trustworthiness, reliability, candor, and a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

I have considered all of the evidence presented. It mitigates the negative effects of her financial indebtedness and the effects that it can have on her ability to safeguard classified information. 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 the 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 E3.1.25 of Enclosure 3 of the Directive are:

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

Darlene Lokey Anderson
Administrative Judge