



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 14-05580

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: *Pro se*

January 28, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on February 19, 2014. (Government Exhibit 1.) On January 16, 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) to the Applicant, which detailed reasons why DOHA 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 answered the SOR in writing on July 11, 2015, and requested a hearing before an Administrative Judge. The case was assigned to the undersigned Administrative Judge on October 13, 2015. A notice of hearing was issued on October 15, 2015, and the hearing was scheduled for November 17, 2015. The Government offered four exhibits, referred to as Government Exhibit 1 through 4, which was received without objection. The Applicant called one witness and presented one exhibit at the hearing, referred to as Applicant's Exhibit A, which were received without objection. She also testified on her own behalf. The transcript of the hearing (Tr.) was received on

November 30, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 59 years old, and married with two daughters. Her son passed away in 2013. She has a high school diploma and three years of college. She is employed with a defense contractor as an Electronic Technician and 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 admits the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated March 13, 2014; October 9, 2014; and August 31, 2015, reflect that the Applicant is indebted to each of the creditors in an amount totaling approximately \$31,000. (Government Exhibits 2, 3 and 4.) Applicant has worked for her current employer since October 1997.

Applicant's husband testified that he and the Applicant have been married for over 36 years. Their financial problems began after he retired from the Navy in 2001. At that time his second daughter was diagnosed with a brain tumor. In July 2001, she underwent two brain tumor surgeries followed by radiation, chemotherapy, and physical and cognitive therapies. Her medical bills were paid by insurance and Tri Care benefits. She is disabled, unable to take care of herself, and is living with the Applicant.

Before being hired on by a defense contractor in 2004, Applicant's husband had several jobs, including a home-based business. Eleven months after beginning his employment with the defense contractor, he quit his job to stay home to take care of his sick daughter. From 2005 to 2010, the Applicant was the only one in the household working. At the time, she was earning about \$45,000, and her husband was receiving military retirement benefits of about \$36,000 annually, for a total household income of \$81,000. They continued to spend money and fell behind on credit cards, and department store debts. They did not want to file Bankruptcy. In 2007, the Applicant and her children traveled to the Phillipines for vacation. (Tr. p. 35.) They hired an attorney to dispute a number of their debts based on recommendations from friends. They were not budgeting their money properly. At that time, they were also providing financial support to their son who was going to school.

According to Applicant's credit reports, the following four delinquent debts set forth in the SOR remain outstanding: 1.(a), a credit card debt owed to a bank in the amount of \$15,965. Applicant states that the debt was written off by the creditor and sold to a collection agency who has been attempting to collect the debt. Applicant states that the statute of limitations has run and it is no longer reflected on her most recent credit report. (Tr. p. 31.) 1.(b), a credit card debt owed to a bank in the amount of \$11,656, was written off by the creditor. (Tr. p. 32.) 1.(c), a debt owed to a department store in the amount of \$5,158 was written off. (Tr. p. 33.) 1.(d), a debt owed to a department store in the amount of \$401 was written off. (Tr. p. 33.)

Applicant's husband testified that their tax returns were audited by the Internal Revenue Service (IRS) and many of their deductions for the home-based business were disallowed. They currently owe a balance of about \$34,000 to the IRS. They are making payments of \$1,700 monthly, \$625 of which is going toward their back taxes owed and the remaining \$1,075 is going into their 401K. (Tr. p. 38.) Applicant's 401k currently has about \$133,000 and her husband's has about \$70,000. (Tr. p. 39.)

In 2010, Applicant and her husband began receiving in-home financial support or disability benefits for their daughter's care in the amount of \$750 per month. They continue to receive this money for her care.

In May 2013 Applicant's son passed away. She did not have enough money to pay for the burial expenses and so they took a loan out against her 401(K). She is currently making payments to pay that back. Applicant has failed to submit any evidence beyond this to show that she has started making payments toward her debt or that she has resolved it. She has not produced a receipt or statement from a creditor confirming that any of her debt has been paid, or a settlement reached, a cancelled check, or a new credit bureau report showing final payment.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) dated February 19, 2014, and answered, "NO," to a series of questions concerning her finances. (Government Exhibit 1.) Section 26 asked, "In the past seven years, have you had a judgement entered against you? Have you had a lien placed against your property for failing to pay taxes or other debts? Have you had any possession or property voluntarily or involuntarily repossessed or foreclosed? Have you had bills or debts turned over to a collection agency? Have you had any account or credit card suspended, charged of, or cancelled for failing to pay as agreed? Have you been over 120 days delinquent on any debts? Are you currently over 120 days delinquent on any debts?" (Government Exhibit 1.) Applicant answered, "NO," to each

of the questions. Applicant failed to list the delinquent debts that were placed for collection that are set forth in 1.(a) through 1(d) of the SOR. (See Applicant's Answer to SOR.)

Applicant testified that her husband helped her fill out the (e-QIP). She stated that it was an honest mistake on her part that she did not list her delinquent debts that had been turned over to collection. She states that she was not trying to hide the debts, as she knows they are her bills. Applicant's husband testified that he should have been more careful in helping his wife fill out the application and he should have checked it for mistakes. (Tr. p. 24.)

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.

Condition that could mitigate security concerns:

20.(b) the conditions 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.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16.(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

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 behavior 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, dishonesty, or conduct 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.

Admittedly, Applicant went through some very stressful medical issues with her daughter, and most recently with her son who passed away in 2013. However, the medical bills were paid by her insurance, and she borrowed the money from her 401K for funeral expenses. The debts in the SOR are delinquent credit card and department store debt that Applicant has failed to pay. Applicant’s history of financial indebtedness has not been mitigated. She claims that the delinquent debts are no longer owing because they have been written off by the creditor. This does not show that she is fiscally responsible. Applicant must show that she can and will resolve her debts. She has not shown an ability to pay all of her delinquent debts or live within her means. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that she can properly handle her financial affairs.

Since the SOR was issued, little has changed with respect to the Applicant’s finances. She has not resolved her delinquent debts. There is nothing in the record that demonstrates any change in her financial habits. This type of misconduct is what the Government is trying to protect against by placing strict requirements on security

clearance eligibility. Presently, Applicant remains excessively indebted, and her dishonesty has not been mitigated.

Applicant has not met her burden of proving that she is worthy of a security clearance. Assuming that she starts to resolve her delinquent debts, and then shows that she has not acquired any new debt that she is unable to pay, she may be eligible for a security clearance in the future. However, not at this time. Considering all of the evidence, the 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. Mitigating Condition 20.(b) *the conditions 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* arguably applies, but is not controlling. Here, Applicant has failed to show that she has acted responsibly. She has not made one payment toward resolving the debt that she incurred. Instead she hired an attorney to help her avoid paying her debts. This shows poor judgment and unreliability. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

In regard to her personal conduct, the responsibility to fill out the security clearance application rests with the person signing their name under penalty of criminal offense for certifying that the information is correct. Filling out the application accurately and correctly is an important factor to determine one's ability for trustworthiness. Applicant's husband has no responsibility to fill out his wife's security clearance application. Applicant was not truthful and candid with the Government on her security clearance application when she intentionally omitted relevant information concerning her finances. At the time Applicant completed the application she knew or should have known that she had a number of delinquent debts that had been turned over to collection. The only reasonable conclusion for not revealing the truth concerning her delinquent debts was that she did not want the Government to know about them. There is no excuse for this misconduct. I find that she deliberately concealed the information from the Government on the application.

Under Guideline E (Personal Conduct), Disqualifying Condition 16.(a) *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

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 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 financial indebtedness and her personal conduct, and the effects it can have on her ability to safeguard classified information. On balance, it is concluded that the Applicant has not overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	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