



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 1) ISCR Case No. 15-03703
)
)
 Applicant for Security Clearance)

Appearances

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

June 2, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on October 9, 2014. (Government Exhibit 2.) On November 10, 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 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 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 11, 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 or about

¹ Applicant provided a copy of a Certificate of Marriage from the State of Maryland indicating that she was married to _____, on June 27, 1998, in _____. (Applicant’s Exhibit C.) Applicant claims that she has not been _____ since 1998. She requests that her name be changed by DoD to correctly reflect the name on her social security card and driver’s license of _____.

February 1, 2016. Applicant received the FORM on February 3, 2016. Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant submitted a reply to the FORM, referred to as Applicant's Exhibits A through E. This case was assigned to the undersigned on May 11, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

FINDINGS OF FACT

Applicant is 39 years old, and is married with three children and one step-child. She has a bachelor's degree. She is employed for a defense contractor as a EHS Representative II. She 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.

There are ten delinquent debts set forth in the SOR totaling approximately \$130,000, the majority of which is a \$119,000 mortgage account. Applicant admitted allegations 1.a., 1.h., and 1.i. She denies allegations 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., and 1.j., as set forth in the SOR under this guideline. Credit reports of the Applicant dated October 30, 2014; October 22, 2015; and January 27, 2016, which includes information from all three credit reporting agencies, indicates that Applicant is indebted to each of the creditors listed in the SOR. (Government Exhibits 4, 5 and 6.) She began working for her current employer in September 2014.

Applicant attributes her financial problems to a series of traumatic events that took place in the past five years. Applicant endured a sexual assault in her house, and then struggled with related Post Traumatic Stress Disorder.² Following this assault, Applicant found it difficult to "wake up and relive the nightmare every day." (Applicant's answer to SOR.) Applicant's 13 year old daughter was sexually assaulted by a 28-year-old man at the horse farm she was working at for therapy, after her best friend committed suicide. Applicant needed to leave the area due to issues with someone else bullying her daughter. Applicant had purchased the house at the peak of the economy, and she could not come close to selling it for what she owed on it. She contacted the bank and was told that her options were either a deed in lieu of

² Applicant's sexual assault was not discussed during her personal subject interview on January 7, 2015. Only her daughter's sexual assault was discussed in detail. (Government Exhibit 3.)

foreclosure, a short sale, or a foreclosure. She decided her best option was a deed in lieu for the property. She moved out of the property on December 13, 2014.

To further complicate matters, when Applicant graduated from college in May 2014, she was not able to find a job immediately. She tried to keep the family above water, making sure that they found a place to live, paid their car payments, paid utilities, and other monthly expenses. The following debts became delinquent.

1.a., a delinquent debt owed to a creditor for an account that was placed for collection in the approximate amount of \$107. Applicant admits the debt. She claims that the debt was for an emergency room visit that should have been paid through her husband's insurance coverage. The insurance company did not pay the bill in a timely fashion and expects the Applicant to pay it. She now refuses to pay it. The amount of the debt is small considering the many other debts that Applicant has paid. (See Applicant's Answer to SOR.)

1.b., a delinquent debt owed for a student loan account in the approximate amount of \$258 with a total balance of \$6,987. Applicant admits the debt. Applicant submitted documentation showing that this student loan debt was consolidated with the others, and has now been paid off. (Applicant's Exhibits A and B.)

1.c., a delinquent debt owed for a student loan account that in the approximate amount of \$19 with a total balance of \$535. Applicant denies the debt. Applicant submitted documentation showing that this student loan debt was consolidated with the others, and has now been paid off. (Applicant's Exhibits A and B.)

1.d., a delinquent debt owed for a student loan account in the amount of \$249. Applicant denies the debt. Applicant submitted documentation showing that this student loan debt was consolidated with the others, and has now been paid off. (Applicant's Exhibits A and B.)

1.e., a delinquent debt owed for a student loan account in the approximate amount of \$109. Applicant denies the debt. Applicant submitted documentation showing that this student loan was consolidated with the others, and has now been paid off. (Applicant's Exhibits A and B.)

1.f., a delinquent debt owed for a student loan account in the approximate amount of \$62 with a total balance of \$1,680. Applicant denies the debt. Applicant submitted documentation showing that this student loan was consolidated with the others, and has now been paid off. (Applicant's Exhibits A and B.)

1.g., a delinquent debt owed for a student loan account in the approximate amount of \$109 with a total balance of \$2,941. Applicant denies the debt. Applicant submitted documentation showing that this student loan was consolidated with the others, and has now been paid off. (Applicant's Exhibits A and B.)

1.h., a delinquent debt owed to a bank that was charged off in the approximate amount of \$4,089. Applicant admits the debt. Applicant could not afford to make the lump sum payment of about \$2,064.33 requested of the creditor. She is currently making smaller payments toward resolving the debt. (Applicant's Exhibit E.)

1.i., a delinquent debt owed to a bank that was charged off in the approximate amount of \$6,232. Applicant admits the debt. Applicant could not afford to make the lump sum payments requested of the creditor. She is currently making smaller payments toward resolving the debt. (Applicant's Exhibit E..)

1.j., a delinquent debt owed to a mortgage lender for an account that was 120 days past due in the approximate amount of \$119,627. Applicant denies the debt. Applicant provided documentation that shows that her home was recently sold by the mortgage lender. Her most recent credit report dated January 27, 2016, shows that she does not owe a deficiency balance on her mortgage loan, in fact it shows a zero balance. Applicant claims that she is waiting for the deed in lieu of the property from the lender. She also claims to have received an Internal Revenue Service Form 1099-A from the lender. (Applicant's Exhibit C.)

Under the circumstances, Applicant has acted responsibly and in good faith to repay her financial obligations, or established a track record of repayment, or otherwise has a substantiated basis to dispute the legitimacy of the delinquent debt. The allegations in the SOR have been mitigated.

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 reasonably under the circumstance;

20.(d) the individual initiated a good faith effort to repay overdue creditors or other resolve debt.

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 that 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 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 Applicant has been financially irresponsible (Guideline F). 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.

The evidence presented shows that Applicant incurred a number of delinquent debts after being the victim of a serious crime, in this case, a sexual assault. The trauma of this event caused her to have post traumatic stress disorder. Her 13-year-old daughter was subsequently sexually assaulted. These horrific events, coupled with her inability to find suitable employment after college, affected her ability to pay her bills on time. Thus, her mortgage, a medical bill, and her student loans became delinquent. Applicant has since consolidated her student loans and paid them off. She surrendered her house to the lender in December 2014. She states that her house was sold by the lender for the amount owed on the loan, and she has a zero balance on the account. Furthermore, she has not been contacted the by creditor concerning any deficiency balance owed. The amount owed on her only outstanding debt, the medical bill for \$107, is insignificant compare to the debts she has paid.

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 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 reasonably under the circumstance; and 20.(d) the individual initiated a good faith effort to repay overdue creditors or other resolve debt also apply. Applicant has resolved all of her delinquent debts, except a small medical bill that she believes should be covered by her insurance company. Hopefully she will get this resolved as well. She has made a good-faith effort to satisfy her delinquent debts. In fact, she has shown that she is financially responsible.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. From the evidence presented, Applicant has demonstrated a pattern of financial responsibility, as she has addressed all but one of the delinquent debts set forth in the SOR. Thus, it can be said that she has made a good-faith effort to resolve his past-due indebtedness. She has shown that she is or has been reasonably, responsibly, or prudently addressing her financial situation.

Under the particular facts of this case, the totality of the conduct forth above, when viewed under all of the guidelines as a whole, support a whole-person assessment of good judgement, trustworthiness, reliability, 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. Applicant has met her burden of proving that she is worthy of a security clearance. Overall, based upon the seriousness of the conduct outlined here, the 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).

I have considered all of the evidence presented. It mitigates 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 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 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 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.
Subpara.	1.g.	For Applicant.
Subpara.	1.h.	For Applicant.
Subpara.	1.i.	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. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge