



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-05141
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Department Counsel
For Applicant: *Pro se*

March 3, 2016

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on April 18, 2013. (Government Exhibit 2.) On April 4, 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.

The Applicant responded to the SOR in writing on May 15, 2015, and on May 28, 2015, in which she 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 the Applicant on or about September 1, 2015. The Applicant received the FORM on September 23, 2015. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. The Applicant did not submit a reply to the FORM. This case was assigned to the undersigned on November 23, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 51 years old, and never married. She has a high school diploma and some college. She is employed with a defense contractor as a Security Compliance Professional 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 subparagraphs 1.(a)., 1.(c)., 1.(e)., 1.(f)., 1.(g)., 1.(h)., and 1.(j)., of the SOR under this guideline. She denies the allegations set forth in subparagraphs 1.(b)., 1.(d)., 1.(i)., 1.(k)., 1.(l)., and 1.(m). (Government Exhibit 1.) Credit Reports of the Applicant dated May 10, 2013; and September 11, 2014, reflect that the Applicant is indebted to each of the creditors set forth in the SOR in an amount totaling in excess of \$14,000. (Government Exhibits 3 and 4.) Applicant has worked for her employer since June 2006.

Applicant gives no explanation as to why she fell behind on her financial obligations. She does indicate that she is helping her son pay for college and that may have had an impact. The fact remains that Applicant fell behind on her bills, and accumulated debt that she could not afford to pay. According to her credit reports, the following twelve delinquent debts remain outstanding: 1.(a), a debt owed to a creditor that was placed for collection in the amount of \$6,227. Applicant states that she intends to pay this off. 1.(b), a delinquent student loan that was placed for collection in the amount of \$2,598. Applicant states that the student loan is currently in deferment status. 1.(c), a debt owed to a creditor was placed in collection in the amount of \$2,168. Applicant states that she intends to pay this off. 1.(d), a debt owed to a creditor that was placed in collection in the amount of \$1,216. Applicant states that she is disputing this debt. 1.(e), a debt owed to a creditor that was placed in collection in the amount of \$763. Applicant states that she intends to pay this off. 1.(f), a debt owed to a creditor in the amount of \$102 with a total balance owed of \$602. Applicant admits the debt and states that she is making payments. 1.(g), a debt owed to a creditor that was placed in collection in the amount of \$598. Applicant states that she intends to pay this off. 1.(h), a debt owed to a creditor for an account that is past due in the amount of \$90. Applicant states that she is making payments and the debt will be paid off in November 2015. 1.(i), a debt owed to a creditor for an account that is past due in the amount of \$19 with a total balance of \$256. Applicant claims that this account is in good standing. 1.(j), a debt owed to a creditor that was placed for collection in the amount of \$205. Applicant states that she is making payments and the debt will be paid off in May 2016. 1.(k), a debt owed to a creditor in the amount of \$76. Applicant states that she has paid

off the debt. 1(l), a delinquent student loan with a bank was assigned to the government due to non-payment. Applicant states that all student loan debts are in deferment. 1.(m), a judgment entered against the Applicant in 2008 in the amount of \$544. Applicant states that she has paid the debt off. 1.(n), Applicant filed for Chapter 13 Bankruptcy in March 2001. Applicant indicates that she owned a home that needed lots of work and she could not afford to pay for it.

Applicant states that she plans to pay off all of her delinquent debt in her credit reports. She states that she is currently making payments on some of her debt and when she finishes paying those she will move on to pay others. She notes that her son will graduate from college next year and that will free up more money to pay her bills. There is no documentary evidence in the record to corroborate her assertion that she is making payments toward several of her creditors. In fact, the record is void as to any documentary evidence to support any payments made toward any of the delinquent debts set forth in the SOR.

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 denied the allegations set forth under this guideline. She completed an Electronic Questionnaire for Investigations Processing dated April 18, 2013, and answered, "NO," to a series of questions concerning her finances. (Government Exhibit 2.) Section 26 asked, "In the past seven years, have you had bills or debts turned over to a collection agency?" and "In the last seven years, have you had any account or credit card suspended, charged off or cancelled for failing to pay as agreed?" Following each question, Applicant was reminded to include financial obligations for which she was the sole debtor as well as those for which she was a cosigner or guarantor. The Applicant answered, "NO," to both questions. (Government Exhibit 2.) These were false responses. She failed to list the delinquent debts listed in the SOR under subparagraphs 1.a., 1.b., 1.c., 1.e., 1.g., 1.j., 1.k., 1.l., and 1.m. (See Applicant's Answer to SOR.)

Section 26 of the same questionnaire also asked, "In the past seven years, have you had a judgment entered against you?" The Applicant answered, "NO," to the question. This was a false response. She failed to list the judgment against her in April 2008 which was satisfied in March 2009. (Government Exhibit 2.)

Applicant was not truthful or candid in her responses to the questions regarding her financial history on her security clearance questionnaire. There is no excuse for this misconduct. The questions on the questionnaire are not complicated or complex. Applicant knew or should have known to answer the questions truthfully and candidly,

which she did not. The only plausible explanation for her failure to reveal the truth is because she did not want the government to know about it.

Furthermore, during her background investigation subject interview in 2013, Applicant was asked by the investigator about her financial issues. She did not volunteer information regarding her finances. It was only after she was confronted with the information regarding each particular debt, did she either begin to explain the debt, or state that she did not recognize the account, and did not have any details. (See ROI in File.)

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 obligation.

Conditions that could mitigate security concerns:

None.

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.

Condition 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

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.

Furthermore, the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F). The 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 his security clearance eligibility.

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. None of the mitigating conditions are applicable. Although Applicant intends to pay all of her delinquent debts and claims to be paying some of her debts, she has provided no evidence to support this claim. She has failed to submit any documentary evidence to corroborate her statements. In fact, the evidence indicates that little, if anything, has changed with respect to her finances. There is nothing in the record that demonstrates any change in her financial habits. Applicant has failed to show that she has done anything to resolve her indebtedness. She has not provided receipts, proof of payments, payment arrangements or any other documentation to support the fact that she has, or is working toward, resolving her delinquent debts. Applicant must show that she can and will resolve her debts. She has not shown an

ability to pay her delinquent debts or live within her means. Therefore, Applicant's history of financial indebtedness has not been mitigated. She remains excessively indebted. At this time, there is insufficient evidence of financial rehabilitation. Applicant has not demonstrated that she can properly handle her financial affairs. There are simply too many delinquent debts that are not being addressed. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

In regard to her personal conduct, 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 she completed the application in 2013, she knew or should have known that she had a number of delinquent debts, including a judgment, within the past seven years. 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.

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).

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.

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.
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.
Subpara. 1.m.	Against the Applicant.
Subpara. 1.n.	Against the Applicant.
Paragraph 2:	Against the Applicant.
Subpara. 2.a.	Against the Applicant.
Subpara. 2.b.	Against the Applicant.
Subpara. 2.c.	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