

DATE: October 29, 2007

In Re:)
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 -----) ISCR Case No. 06-26170
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq. , Department Counsel

FOR APPLICANT

Patrick Gromek, Personal Representative

SYNOPSIS

Applicant, a 50-year-old training instructor for the Army employed by a defense contractor, mitigated financial security concerns arising from IRS tax delinquencies for four tax years arising because of underemployment for a four year period after he retired from the Army. Payments have been made and are continuing under a payment plan for the \$7,500 balance due worked out by Applicant and the IRS. Clearance is granted.

STATEMENT OF CASE

_____ On or about May 23, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant

to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, and subject to the revised Adjudicative Guidelines effective September 1, 2006, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 25, 2007, Applicant responded to the SOR allegations and requested a hearing. The matter was assigned to me on July 23, 2007. A notice of hearing was issued on August 30, 2007, for a hearing on September 12, 2007, and held that day. The government offered five exhibits. Applicant offered eight into evidence at the hearing. All of the offered exhibits were admitted in evidence without objection. The transcript was received on September 20, 2007.

FINDINGS OF FACT

_____Applicant admitted with explanation six of the eight SOR allegations relating to a 1992 bankruptcy and delinquent debts to the IRS. He denied two allegations relating to state taxes. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor working as a training instructor in the intelligence field since November 2004. He served 22 years in the Army and retired in 1998. For the five years between his retirement and his present employment he had only occasional work as an independent contractor which was not remunerative. In large measure, that led to his current financial problems.

An analysis of the debts alleged in the SOR from testimony and documentary evidence submitted in the record indicates as follows:

1. Par. 1.a.: Applicant filed for Chapter 7 bankruptcy in March 1992 as a result of a divorce.
2. Par. 1.b.: Applicant was discharged in bankruptcy in July 1992. Some of the debts were paid, others were discharged without payment.
3. Par. 1.c.: An IRS tax lien for 1999 taxes in the amount of \$3,909 was filed against him.
4. Par. 1.d.: An IRS tax lien for 2000 taxes in the amount of \$3,366 was filed against him.
5. Par. 1.e.: Applicant is indebted to IRS for tax year 2005 in the amount of \$599.
6. Par. 1.f.: Applicant is indebted to IRS for tax year 2006 in the amount of \$1,076.
7. Par. 1.g.: Applicant was indebted to the State of Arizona in the amount of \$288 for 1999.

8. Par. 1.h.: Applicant was indebted to the State of Arizona in the amount of \$249 for 2000.

During the period 1999 to 2004, when Applicant was working as an independent contractor no taxes were withheld and he should have received 1099s from his employers but often did not. Thus, he fell behind in payment of his 1999 and 2000 taxes and liens were placed by IRS. He has since worked out a plan with IRS to resolve the debts from these two tax years. He has been paying on them through voluntary withholdings from his salary (Exhs. A, C, and D), but now they are being resolved through garnishment by payroll deduction in the amount of \$130 per month (Exhs. G and H). The net result is that his total tax debt is now approximately \$7,500.

Applicant is also negotiating a payment plan for the two recent tax years, 2005 and 2006. He filed the tax returns but did not have sufficient funds to pay all the taxes but has made partial payments and is making voluntary payments of \$100 per month (Tr. 27 and Exh. D).

As to the Arizona tax debts, Applicant submitted documentation to establish that he does not owe those state taxes (Exh 5). The government concedes that the debts are not owed (Tr. 8).

Applicant has a BS degree in Information Technology and an associates degree in Intelligence Operations both of which he earned in 2005. He is paying \$240 per month on his student loan (Exh. 3).

Applicant is highly regarded by his employer for his work ethic and skills (Tr.40). His present work involves application of skills he learned while on active duty with the Army. He is highly regarded by the Army office for which he provides support services (Exh. E). The chief executive officer of his employer served as his personal representative at the hearing and offered his support in helping him further reduce his tax indebtedness through the use of his own CPA firm (Tr.40).

Applicant's annual salary is \$65,000 and his Army retirement is \$12,000 per annum. He is divorced and has two grown children one of whom is in the Army. His present income and financial obligations are such that he can resolve his outstanding tax debts and live without incurring additional debts which he could not pay (Exh. 3). He intends to increase the payments now being made to accelerate the payment of the tax debts.

_____Applicant has made good faith efforts to resolve delinquent debts arising from causes many of which were beyond his control.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” *Id.* at 527. An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the

presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Revised Adjudicative Guidelines (AG ¶ 2 a). Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

_____ Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (AG ¶ 2 b) “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors under the revised Adjudicative Guidelines (AG) and factors in the Directive, I conclude the following with respect to all allegations set forth in the SOR:

Applicant’s delinquent debts prompted the allegation of security concerns under Guideline F because an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c) and evidence of inability or unwillingness to satisfy debts (AG ¶ 19 a). Mitigating Conditions (MC) that might apply include the fact that the behavior happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment (AG ¶ 20 a), or the person has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (AG ¶ 20 d). I find that the evidence justifies application of the cited mitigating conditions to Applicant.

The fact that Applicant has had one Chapter 7 bankruptcy in 1992 raises possible concerns about a pattern of financial problems. However, that was 15 years ago while he was in the Army and under circumstances not likely to be repeated.

In all adjudications, the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information.

The “whole person” concept recognizes we should view a person by the totality of his acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant impressed me at the hearing as a credible, hard-working person whose delinquent debts arose in large measure as a result of his under-employment for five years. Those conditions are unlikely to recur as he has a well-paying job with a company that is very supportive and appreciative of his work. He

has taken significant corrective steps and established to my satisfaction that he is now financially responsible and will remain so.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude that a security clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive are as follows:

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge