

DATE: November 29, 2007

In Re:)
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 -----) ISCR Case No. 07-00301
 SSN: -----)
)
 Applicant for Security Clearance)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's delinquent financial indebtedness was caused by circumstances beyond his control, namely unemployment and underemployment over a nine year period, 1996 through 2005. Since gaining full time employment in November 2005, he has made a good faith effort to resolve his indebtedness, as he is paying his debts in a systematic manner and has shown that he is now financially responsible. Clearance is granted.

STATEMENT OF THE CASE

On April 20, 2007, the Defense Office of Hearings and Appeals (DOHA), 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, 2007, and requested a hearing before DOHA Administrative Judge. This case was assigned to the undersigned on June 29, 2007. A notice of hearing was issued on July 5, 2007, scheduling the hearing for July 25, 2007. A hearing was held on July 25, 2007, however, the matter was continued in order to allow the Applicant the opportunity to obtain additional documentary evidence that was necessary to proceed in this matter. A second hearing was held on September 25, 2007. At the hearings the Government presented eleven exhibits, referred to as Government Exhibits 1 through 11. The Applicant presented twenty-five exhibits, referred to as Applicant's Exhibits A through Y. He also testified on his own behalf. The official transcripts (Tr.) were received on August 3, 2007 and October 3, 2007.

FINDINGS OF FACT

The Applicant is 57 years old and married. He has the equivalent to a Bachelor's Degree in Mechanical Engineering. He is employed by a defense contractor as an Engineer and is seeking to obtain a security clearance in connection with his 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 he is financially overextended and at risk to engage in illegal acts to generate funds.

Prior to 1996, the Applicant was gainfully employed and met all of his financial obligations without difficulty. Since NAFTA passed in 1994, he has suffered serious economic hardship. From about 1996 through 2005, he experienced several employment lay-offs, company closings, and spotty employment due to the poor manufacturing economy. Simply stated, for a nine year period, he was unable to find suitable employment. Although he did consulting and contract engineering work, it was sporadic and temporary. During this period, he was unable to properly support his family and meet his financial obligations. Although he always filed his income tax returns on time and paid some taxes, he failed to withhold enough money from his paycheck to cover the taxes and could not afford to pay them when they were due. (*See Applicant's Exhibits O, P, Q, R, and S*). As a result

of this unemployment and underemployment, the Applicant has experienced financial difficulties that he is still trying to dig himself out of.

Finally, in November 2005, the Applicant was offered a full time permanent position with a defense contractor. In order to take this job, the Applicant had to move from a newly purchased home in Illinois to California. His family currently resides in Illinois, but plans to join him in California as soon as they are able to sell their home in Illinois. (*See Applicant's Exhibit L*). The Applicant plans to immediately pay off all of his debt from the profits from his home in Illinois. (*See Government Exhibit 6*).

The Applicant admits each of the debts listed in the SOR. (*See Applicant's Answer to SOR and Government Exhibits 5, 7 and 8*). A debt originally owed to Ameritech, that was taken over by Horizon, in the amount of \$143.00 for a disconnect fee, the Applicant believes he does not owe. The Applicant states that because he did not sign a contract with the creditor, he is not obligated to pay the debt. He realizes, however, that his credit reports reflect that he owes the debt. At the time of the hearing, the Applicant had discussed the issue with the creditor of several occasions, but had put nothing in writing. Two letters prepared by the Applicant, both dated July 30, 2007, show that he recently wrote to Equifax and Trans Union concerning this debt dispute. (*See Applicant's Exhibit U and V*). The Applicant received a response from Trans Union that the disputed debt does not currently appear on his Trans Union credit report. (*See Applicant's Exhibit W*).

The Applicant owed delinquent federal taxes to the Internal Revenue Service (IRS) in the total approximate amount of \$16,300.95. (*See Tr. p. 17 and Applicant's Exhibit N*). This includes a debt to the IRS in the amount of approximately \$8,055.00, a debt to the IRS in the amount of \$6,647.00, and a debt to the ISR in the amount of \$4,098.00. Three notice of federal tax liens were filed against the Applicant, two in August 2003 and one in December 2006. (*See Government Exhibits 1, 2 and 4*). Since February 2007, his wages are have been voluntarily garnished in order to pay these debts. At this rate, he projects that he will pay off the debt by March 2008. An e-mail correspondence dated July 30, 2007, from the Applicant's employer's central payroll services indicates that as of that date the Applicant had already paid \$7,385.23 toward his debt to the IRS through voluntary garnishment. (*See Applicant's Exhibit N*). He is paying 25% of his disposable wages. In addition, the Applicant's wife has paid \$1,432.29 of this debt through garnishment. (*See Applicant's Exhibit B*). In total the Applicant believes that he has paid approximately \$10,000.00 toward this debt. (*Tr. p.17*). The Applicant stated that although he always filed his income tax returns and paid his taxes, he simply was not withholding enough, and could not afford to pay the taxes because of his underemployment situation. He was forced to use his savings and retirement money to live on. Since November 2005, when he gained full time employment, he has been paying his debts.

A debt in the amount of \$514.00 for delinquent medical bills is also being paid. Applicant submitted a payment schedule that was approved by the creditor indicating that he is making payments of \$75.00 monthly and will continue to do so until the debt is paid in full. (*See Applicant's Exhibit D*).

For the past year and a half, his most recent full time employment, the Applicant has received positive performance reviews from his employer. (See Applicant's Exhibit K). He is now paying his debts and is also able to save some money. (See Applicant's Exhibit F).

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;
- 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 has 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;
- 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 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 predicted 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, 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 his 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 his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case. With respect to his finances, the Applicant poor financial history was caused by circumstances beyond his control, namely his job lay off and his inability to find suitable employment. Since his current employment, he has been paying his federal taxes. His wages are voluntarily being garnished and he is paying them off in a systematic manner. He is also paying making payments toward his medical bills. With respect to the debt that he believes he does not owe, he has recently placed his dispute in writing with the creditor, and with the credit reporting agencies requesting that they remove the debt from his credit report. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. He is paying his delinquent debts and plans to continue to pay them on a monthly basis until they are paid off. He is also saving money. The Applicant has demonstrated that he can properly handle his financial affairs.

Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts; 19(c) a history of not meeting financial obligation; and 19(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ration, and/or other financial analysis* 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 has 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).

In addition to the disqualifying and mitigating conditions in this case, I have also considered the "whole person" concept. The Applicant is 57 years of age and is a senior engineer. He has an impressive resume and extensive experience and education in the field of engineering, but over the past eleven years, has unfortunately encountered bad luck in his efforts to secure a respectable, decent paying job. Since gaining full time employment, he is paying his delinquent debts. His taxes are being paid and so are his delinquent medical bills. His only other delinquent debt has now been

properly disputed and no longer appears on his Trans Union credit report. In order to provide financial support for his family, he has moved across the country to find suitable employment, having to leave his family behind. Considering all of the facts and circumstances, I find that he has mitigated the concerns arising from his financial considerations.

I have considered the evidence as a whole, including each of the appropriate factors and guidelines in the Directive. I have carefully considered the Applicant's testimony and his documentary evidence. On balance, I conclude that his mitigating evidence is sufficient to overcome the evidence of unreliability and unsuitability for a security clearance. Therefore, it is clearly consistent with the interests of national security to grant him a security clearance.

On balance, it is concluded that the Applicant has overcome the Government's case opposing his 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 for the Government's Statement of Reasons.

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 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.

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

