



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-00843
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Lei, Department Counsel  
For Applicant: *Pro Se*

April 16, 2008

---

**Decision**

---

LOKEY-ANDERSON, Darlene D., Administrative Judge:

The Applicant submitted his Security Clearance Application (SF 86) on May 27, 2005. On August 17, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 a clearance should be denied or revoked.

The Applicant responded to the SOR on September 5, 2007, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 7, 2007. A notice of hearing was issued on January 29, 2008, and the hearing was scheduled for February 28, 2008. At the hearing the Government presented twelve exhibits, referred to as Government Exhibits 1 through 12. The Applicant presented nine exhibits, referred to as Applicant's Exhibits A through I. He also testified on his own behalf. The record remained open after the hearing until close of business on March 13, 2008, to allow the Applicant to submit additional

documentation. The Applicant submitted one Post-Hearing Exhibit consisting of three pages referred to as Applicant's Post-Hearing Exhibit. The official transcript (Tr.) was received on March 14, 2008.

### **FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 55 years old and has four years of college but no degree. He is employed by a defense contractor as a 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 a security clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

The Applicant admits each of the allegations set forth in the SOR. He was indebted to eight separate creditors totaling approximately \$ 46,755.00. Credit reports of the Applicant dated October 2005, May 2007, and October 2007, reflect each of these delinquent debts. (See Government Exhibits 6, 7 and 9). The Applicant indicates that he plans to pay all of his delinquent debts. He has recently paid several smaller debts set forth in the SOR under allegations 1 (d), 1(e), 1(f) and 1(h). (See Applicant's Exhibits A, B, C and E). The debts listed in allegations 1(a), 1(b), 1(c) and 1(g) remain owing and total approximately \$44,000.00. (See Government Exhibits 6, 7 and 9).

Most of his debts are for delinquent taxes owed to the Internal Revenue Service (IRS). The Applicant attributes his indebtedness to various periods of unemployment that occurred from July 1993 to March 1995, May 2000 to August 2000, January 2002 to March 2002, and July 2003 to August 2003. He also underwent back surgery in 1997, and because of related complications was out of work for a year. Moving costs, low pay and a failed business venture also contributed to his indebtedness.

For tax purposes, from 1997 through 2007, the Applicant has tried to maintain his employment outside of the United States in order to keep the foreign income exemption. This exemption allowed him to avoid paying taxes on up to \$75,000.00 of his income, as long as he was employed outside of the United States for 330 days out of 365. (Tr. p. 55). Several job positions he took during this period were not located outside of the United States for at least 330 days and therefore did not qualify for the exemption. The Applicant states that in 2002 he changed the exemptions on his tax return in order to pay taxes on his income.

The Applicant has always filed his annual income tax returns on time, but on many occasions did not have the money to pay the taxes. The IRS determined that because the Applicant was employed in the United States during the years in question, he was not eligible for the foreign income exemption and therefore owes the delinquent taxes set forth in the SOR. (Tr. p. 57).

In 1993, the Applicant was employed in country A and moved to country B for a job, until he returned to the United States. His wife and children relocated from country A to country C. Sometime later, his family rejoined him in the United States. In 2000, the Applicant tried to start an investment company but was not successful. His family left the United States and moved back to country C. He then remained in the United States to work. He worked in several different states in the United States but after several months was laid off. Since May 2005, the Applicant has been consistently employed full time. (Tr. p. 47).

From 1995 to 2000, the Applicant and his wife were separated. The Applicant states that he sent money to her to help with the children. In January 2000, the Applicant and his wife divorced and he took on all of the debts from the marriage.

With regard to the smaller debts alleged in the SOR, in July or August 2007, the Applicant paid them. Allegations 1(d), a debt in the amount of \$886.98; 1(e), a debt in the amount of \$66.00; 1(f), a debt in the amount of \$432.00; and 1(h), a debt in the amount of \$385.00 have been paid. The Applicant also set up a monthly payment plan in the amount of \$269.00 a month to pay the debt alleged in allegation 1(g) in the amount of \$12,063.03. (See Applicant's Exhibit E). He states that he makes the payment when he can. (Tr. p. 72).

A debt owed to the Internal Revenue Service in the amount of \$7,913.00 for delinquent taxes, interest and penalties for tax year 1998 remains owing. A federal tax lien was filed against the Applicant on February 21, 2001. (See Government Exhibit 8).

A debt owed to the Internal Revenue Service in the amount of \$21,452.71 for delinquent taxes, interest and penalties for tax year 1999 remains owing. A federal tax lien was filed against the Applicant on May 26, 2004. This lien reflects both 1999 and 2000 tax liability. (See Government Exhibit 8).

A debt owed to the Internal Revenue Service in the amount of \$7,604.81 for delinquent taxes, interest and penalties for tax year 2000 remains owing. A federal tax lien was filed against the Applicant on May 26, 2004. This lien reflects both 1999 and 2000 tax liability. (See Applicant's Answer to SOR).

It was not until November 2007, that the Applicant sent the IRS documentation concerning his interest in setting up a payment plan. (See Applicant's Exhibit D). He is proposing to pay \$2,600.00 a month toward his back taxes and is awaiting a response from the IRS. He is now remarried and between the Applicant, (who brings home just under \$4,000 a month), and his present wife, (who brings home \$3,600), he believes

that he can pay that amount. Since 2005, he has been withholding \$100.00 per pay period from his check to pay his taxes. The reason he has not made any payments toward the delinquent debts any earlier is because his new wife, who is an Argentine national, was unable to work until she was able to get a green card.

Performance evaluations for 2007 and 2008 reflect excellent ratings. The Applicant is considered to be reliable and results oriented keeping the customer satisfaction his primary objective. He is referred to as a "Shining Star" in Systems Engineering and Range Operations. His planning, execution and follow-up work in the program has been well done. He is an example for his peers to emulate, especially his emphasis on teaming and full disclosure of plans. (See Applicant Exhibit I).

Three letters of recommendation submitted on behalf of the Applicant indicate that at work, church and in their community, the Applicant is well respected and has been a good friend and neighbour. He is recommended for a position of trust. (See Applicant's Post-Hearing Exhibit).

## **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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

#### **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:

None.

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, a security clearance 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 such access 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 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.

The evidence shows that the Applicant has experienced some difficult times over the years that include a divorce, multiple periods of unemployment and relocations, health problems, surgery and a failed business venture. All of these things are taken into considerations and have obviously contributed to his financial hardships. However, the evidence shows that he has been employed full time since 2005. Since then, until recently, he has ignored his delinquent debts. He has recently paid off several of his smaller debts, but has done very little to pay his enormous delinquent tax debt. He remains indebted to the IRS in the amount of \$44,000.00. To his credit, he has recently requested a payment plan from the IRS in an effort to begin to resolve his delinquent tax indebtedness, but has not heard back as to whether they agree with the proposal.

Upon review of his financial report, it appears that he has some disposable income at the end of the month to pay his delinquent bills, but has not used it in any significant way to pay his delinquent taxes. 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* are applicable. None of the mitigating factors apply. His financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay his overdue creditors or otherwise resolve his debts.

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 under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability,

lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information. The Applicant has just begun the process of financial rehabilitation and he has a long way to go before his financial affairs are in order.

This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of 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: Against the Applicant.
- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: For the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: Against the Applicant.
- Subpara. 1.h.: For the Applicant.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge