



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-01101
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Pro Se

March 17, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Security Clearance Application (SF 86), on November 24, 2004. On October 22, 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 December 13, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on January 15, 2008. A notice of hearing was issued on January 23, 2008, scheduling the hearing for February 13, 2008. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B. The Applicant also testified on her own behalf. The record remained open until February 23, 2008, to allow

the Applicant to submit additional supporting documentation. She did not submit any additional documentation. The official transcript (Tr.) was received on February 27, 2008.

FINDINGS OF FACT

The Applicant is 52 years old and has a Masters Degree in Biology. She is employed by a defense contractor as a Computer Consultant and is seeking to obtain a security clearance in connection with her 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 to engage in illegal acts to generate funds.

In 1986, the Applicant and her husband started their own computer consulting business that they ran out of their house. From 1986 through 1998, they had an accountant who prepared their tax returns, but did not do a good job. The Applicant claims that their business expenses were significantly underestimated and so they are now being held liable for this situation. From 1987 until 1994, the Applicant worked full time for another company. In 1994, she started doing independent consulting exclusively for her own business. In approximately 1996/1997, the Applicant learned that they had serious tax problems and she took over the financial responsibilities of the company. Since then, she has been trying to resolve their tax problems. Additional tax problems surfaced following 9/11 when the Applicant was unemployed for eighteen months.

The Applicant admits that she is indebted to the Internal Revenue Service in the amount of \$188,788.49 in taxes, penalties and interest for tax years 1992 through 1997. Notices of federal tax liens were filed against her in 1995, 1997, 2000 and 2001 for non-payment of her federal income tax debt. (See Government Exhibit 5).

The Applicant also admits that she is indebted to the Internal Revenue Service in the amount of \$67,180.04 in taxes, penalties and interest for tax years 2001 and 2003. (See Government Exhibit 5).

The Applicant denies that she is indebted to the California Franchise Tax Board in the amount of \$6,716.17. She has set up a payment plan and has been making regular monthly payments towards her indebtedness. She currently owes approximately \$2,171.72, and has only eleven payments left until she has paid the debt in full. (See Applicant's Exhibit B).

In numerous conversations with the IRS, it was suggested to the Applicant that she sell her home which has sufficient equity to pay her delinquent federal tax debt. The Applicant did not find this to be a reasonable solution because of her two adult children who come to visit from time to time, and because she maintains two offices and networks of computers in her home.

In March 2005, the Applicant made an offer and compromise of \$50,000.00 cash to resolve all of her delinquent federal tax issues. This offer was rejected. Since then, over the past two and a half years, the Applicant has been trying to get the IRS to reconsider her original offer and compromise or place her on a payment plan. She has met with an IRS representative on several occasions and she has provided them the requested documentation. (See Applicant's Exhibit A). She is currently awaiting a response. She has not spoken to any one from the IRS since September 2007. The Applicant has even secured a promise of a mortgage loan from a lender to show the IRS that she had the funds immediately available to start paying on the debt.

The Applicant was told by the IRS at one time that because her indebtedness was so large, no one agent had the authority to handle it. (Tr. p. 65). She was also told that by the end of September 2007, her tax indebtedness would have increased to approximately \$350,000.00. (Tr. p. 63).

Since the Applicant started taking over the financial side of the business, she has been paying their taxes in full each year and has recently started making quarterly tax payments. They have also hired a competent accountant in order to prevent future tax problems.

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 her 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 her security clearance eligibility.

Since 1996/1997, the Applicant has known about her serious tax delinquencies. Over the years, the penalties and interest have continued to accrue, increasing her tax liability. Although she states that she has been consistently working to resolve these issues, it is clear that she has not been as diligent as she should have. She presently owes, from her own admission, approximately \$350,000.00 in delinquent federal tax debt. Her offer and compromise of \$50,000.00 was not acceptable to the IRS. She has not made one payment toward resolving her enormous federal tax liability. With regard to her delinquent state tax, she is currently making payments toward the debt and has reduced it, and plans to continue to pay it until it is paid off in full. However, she has not started to reduce her delinquent federal tax debt and has a long way to go before it is resolved. At the present time, she has not presented sufficient evidence to demonstrate a track record of financial responsibility or that she has resolved her financial indebtedness. 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.

Upon review of her financial statement, it appears that she has some disposable income at the end of the month to pay her delinquent federal tax debt. However, given the large amount of federal tax debt that she owes, and the fact that she has not yet made even one payment toward the debt, there is little evidence of financial rehabilitation at this time. 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 apply. Her financial problems remain current, they are not isolated, and the Applicant has not initiated a prompt, good faith effort to repay her overdue creditors or otherwise resolve his debts. 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 her 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.

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