



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



In the matter of:)
)
-----) ISCR Case No. 03-21497
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro Se*

May 27, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (SF-86) dated August 1, 1996. On November 6, 2008, 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 a date uncertain and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 17, 2009. A notice of hearing was issued on February 23, 2009, scheduling the hearing for March 12, 2009. At the hearing the Government presented twenty-three exhibits, referred to as Government Exhibits 1 through 23. The Applicant presented no exhibits, but testified on his own behalf. The record remained open until close of business on March 26, 2009, to allow the Applicant to submit additional documentation. The Applicant submitted fourteen Post-Hearing Exhibits, referred to as 1 through 14. The official transcript (Tr.) was received on March 19,

2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

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 a high school diploma and three years of college. He is employed by a defense contractor as a Aerospace Planner 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 to all of the allegations set forth in the SOR, except allegations 1(g), 1(q), 1(r), 1(s), 1(t),1(u) and 1(v) under this guideline. Credit Reports of the Applicant dated April 16, 2002; March 8, 2004; June 1, 2005; February 18, 2006; February 27, 2006; August 13, 2007; February 4, 2008; May 23, 2008; October 27, 2008; and February 13, 2009, collectively reflect each of the delinquent debts set forth in the SOR. These reports indicate that the Applicant is currently indebted to a number of creditors totaling in excess of \$45,000.00. (See Government Exhibits 8, 9, 11, 13, 14, 16, 17, 18, 21, and 22).

The Applicant explained that during the 80's, he filed exempt on his tax withholding due to child support obligations for three children that he had to pay. This in turn caused him difficulty with paying his regular monthly expenses and bills. It was also about this time that he stopped filing income tax returns and stopped paying his income taxes because he believed that he did not have to, pursuant to the beliefs of a radical movement at the time, and because he simply did not have the money. In 1992, the Internal Revenue Service (IRS) garnished his wages for tax years 1982 through 1986 and for tax year 1991.

Applicant testified that on October 24, 1986, upon the advice of his attorney, he filed for Chapter 13 bankruptcy with the intentions of being relieved of his tax burden. (Tr. pp. 54 -55). The Applicant's wife at the time had also charged up credit card debt that the Applicant could not afford to pay. He listed approximately \$68,593.62 in debts. For some unknown reason, the bankruptcy was dismissed on December 11, 1986. He filed for Chapter 13 again, on January 6, 1987. The bankruptcy was dismissed on April 24, 1992.

Due to his continuing financial problems brought on by overspending, child support obligations, and requests for tax payments required by the IRS and the state, the Applicant was advised by his attorney to file for Chapter 7 bankruptcy. On or about November 18, 1992, the Applicant filed for Chapter 7 bankruptcy. He listed his liabilities of \$73,005.00 and total assets of \$95,247.00. The Applicant's debts were discharged on March 24, 1993.

As a result of his failure to file income tax returns on a timely basis, and for his failure to pay his income taxes, the Applicant became excessively indebted to the Internal Revenue Service and the state franchise tax board. Evidence in the record shows that the Applicant is indebted to the IRS for federal back taxes owed for tax year 1992, in the amount of \$10,257.73; for tax year 1993, in the amount of \$4,860.97; for tax year 1994, in the amount of \$5,723.36; for tax year 1995, in the amount of \$6,354.91; for tax year 1996, in the amount of \$6,176.65, and for tax year 1997 in the amount of \$6,816.44. (See Government Exhibits 6 and 20). He is also indebted to a state franchise tax board for back taxes owed for tax year 1997, in the amount of \$1,313.69; for tax year 1998, in the amount of \$7,788.01; for tax year 1999, in the amount of \$1,755.62; and for tax year 2002, in the amount of \$1,273.75. (See Government Exhibit 19).

Applicant currently has one federal tax lien filed against him for approximately \$31,472.00. (See Government Exhibits 6, 12, 17, 18, 20 and 23). He also has three state tax liens that have been filed against him that total almost \$15,000.00. (See Government Exhibits 13, 15, 18, 19).

Applicant is also indebted to a number of other creditors. (See Government Exhibit 8, 9, 11, 13, 14, 16, 17, 18, 21, and 22). Applicant denies a debt owed to a hospital in the amount of \$134.00. He denies a debt to a bank in the amount of \$128.00. He denies a credit card debt in the amount of \$1,197.00. He denies a debt to a telephone company in the amount of \$162.00, and contends that he has paid the debt, but provides no proof of payment. He contends that a debt owed for delinquent child support in the amount of \$530.00 is a mistake. Also, a debt owed to a cable company in the amount of \$276.00 is a mistake because he turned in the cable box. A debt owed to a creditor in the amount of \$86.00 remains outstanding because the creditor would not allow him to pay it without a drivers license. Regarding a debt owed to a creditor in the amount of \$68.00, the Applicant has no knowledge of the creditor. Although the Applicant denies these debts, they remain listed on his latest credit report. (See Government Exhibit 22).

The Applicant testified that his wages have been garnished by the IRS and the state franchise tax board for many years. Except for an eight month period where he was on disability, he has had an ongoing wage garnishment. He states that in February 2008, he entered into an agreement with both tax authorities to have his wages garnished for back tax repayment to the IRS in the amount of \$150.00 weekly, and to the state franchise tax board in the amount of \$60.00 weekly. (Tr. p. 72). These garnishments are currently in effect.

In addition, the Applicant hired a tax accountant to assist him in filing his income tax returns. He has filed his federal and state income tax returns for tax years 1992,

1993, 1994, 1995, 1996, and 1997. A letter from the Applicant's tax preparer indicates that he with regard to tax year 2002 and 2006, the Applicant expects to receive a refund. (See Applicant's Exhibits 4, 13 and 14).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his ability to protect classified information.

The Applicant failed to file his federal income tax returns on a timely basis for tax years 1998, 1999, 2000, 2001, 2003, 2005 and 2007. Applicant also failed to file his state income tax returns on a timely basis for tax years 1990, 1991, 1994, 1995, 1996, 1999, 2001, 2002, 2003, 2004, 2005, 2006 and 2007. Applicant's failure to file federal and state income tax returns on a timely basis demonstrates an unwillingness to comply with rules and regulations and raises serious questions about his judgment, reliability and trustworthiness.

On September 18, 1998, Applicant filed his 1992, 1993, 1994, 1995, 1996 and 1997 federal and state income tax returns. (See Applicant's Post-Hearing Exhibit 6, 7, 8, 9, 10 and 11). His income tax returns for the other tax years in question have not yet been filed.

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.

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.

Conditions that could raise a security concern:

16(e). personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

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, 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

- 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 and personal 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has been financially irresponsible (Guideline F) and he failed to file his tax returns on a timely basis (Guideline E). 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.

Beginning in the 80's, the Applicant failed to file his federal and state income tax returns on a timely basis and failed to pay his federal and state taxes. As a result, he has been playing catch up for many years. To this date, he remains excessively

indebted to both the IRS and the state tax authorities. He has filed some of his income tax returns, but not all of them. Both tax authorities are presently garnishing his wages. He does not know what he currently owes, but it is clear that both tax liens remain in effect. In addition, the Applicant has a number of other delinquent debts that have not been cleared from his credit report. Applicant needs a better handle on his financial affairs in order to properly resolve them. He is obviously just beginning the process of financial rehabilitation, but more time is needed to work on a budget and payment plan and show a systematic method of payment over time.

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.

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. His financial problems remain current and they are not isolated. He has only recently initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts. At the present time his financial affairs are still not entirely being addressed. More time and progress is necessary to determine that he is sufficiently reliable and trustworthy to be granted access to classified information.

Under Guideline E, (Personal Conduct), Disqualifying Condition *16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group* applies. Applicant failure to file his income tax returns and pay his taxes in a timely fashion is indicative of poor judgment, unreliability and untrustworthiness. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guidelines F (Financial Considerations) and E (Personal Conduct).

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 Paragraphs 1 and 2 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.: 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.
- Subpara. 1.o.: Against the Applicant.
- Subpara. 1.p.: Against the Applicant.
- Subpara. 1.q.: Against the Applicant.
- Subpara. 1.r.: Against the Applicant.
- Subpara. 1.s.: Against the Applicant.
- Subpara. 1.t.: Against the Applicant.
- Subpara. 1.u.: Against the Applicant.
- Subpara. 1.v.: Against the Applicant.
- Subpara. 1.w.: Against the Applicant.
- Subpara. 1.x.: Against the Applicant.
- Subpara. 1.y.: Against the Applicant.
- Subpara. 1.z.: Against the Applicant.
- Subpara. 1.aa.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: 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