

DATE: November 30, 2007

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In Re: )	
)	
----- )	ISCR Case No. 06-19154
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's delinquent financial indebtedness was primarily caused by his failure to withhold proper taxes from his retirement pensions, and a divorce and its related complications. He has addressed almost all of his debts by setting up payment plans and making regular monthly payments toward the debts. The one debt he has not addressed, he will set up a payment plan and start making payments soon. He has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. Clearance is granted.

## STATEMENT OF THE CASE

On March 30, 2007, and May 11, 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 June 18, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on October 9, 2007. A notice of hearing was issued on October 16, 2007, scheduling the hearing for November 1, 2007. At the hearing the Government presented nine exhibits, referred to as Government Exhibits 1 through 9. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B. The Applicant also testified on his own behalf. The record remained open until November 15, 2007, to allow the Applicant to submit additional supporting documentation. He submitted two Post-Hearing Exhibits, referred to as Post-Hearing Exhibits A and B. The official transcript (Tr.) was received on November 13, 2007.

## FINDINGS OF FACT

The Applicant is 65 years old and has a high school diploma and almost two years of college. He is employed by a defense contractor as a Security Guard 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.

The Applicant retired from the United States Air Force in 1980 as a Master Sargent (E-7), and retired from the United States Post Office in 2004 as a government civilian employee. He is receiving retirement pensions from the Air Force, (which includes a VA disability check) as well as a pension check from the United States Post Office. After some confusion as to whether he should or should not withhold income taxes from his pension checks, for tax years 1995, and 1997 through 2004, he did not have taxes withheld from his Air Force retirement pay. This caused financial problems since, as a result, he became indebted to both the state and federal taxing authorities for back taxes. He is currently indebted for back taxes in the amount of at least \$40,000. He also fell behind on several other bills during and after his divorce.

In an effort to pay off his past due debts, the Applicant put his house up for sale. Apparently, the buyer breached the purchase agreement, committing possible fraud against the Applicant. The Applicant explained that he agreed to sell the house to the buyer assuming the buyer would get a new loan in his name. The buyer never got the loan, but the title of the house was transferred to the buyer. The buyer allowed the Applicant to live in the house under the agreement that the Applicant pay him \$1,000.00 a month for rent. To prevent foreclosure, the Applicant who still remains responsible for the mortgage, is paying the note and the property taxes on the house, as well as paying the buyer \$1,000.00 a month to live there. The buyer, who now has legal title to the house, has not paid the Applicant anything and refuses to comply with the purchase agreement. The Applicant is planning to hire a real estate attorney to pursue the matter further. In the mean time, he has made arrangements with most of his creditors to pay his delinquent debts.

He admits all of the debts listed in the SOR, except allegations 1(h),1(i),1(j), and 1(k), which are those debts that he is disputing. Credits reports of the Applicant reflect that he owes each of the debts listed in the SOR. (*See* Government Exhibits 3,4, 5 and 9).

Delinquent back taxes owed to the Internal Revenue Service in the amount of \$41,254.00 including interest and penalties for tax years 1995, and 1997 through 2005 are currently being paid in the amount of \$413.00 monthly by money order that the Applicant is mailing. This payment arrangement was approved by the IRS. (Tr. p. 36 and Applicant's Post-Hearing Exhibits A and B). A federal tax lien was entered against the Applicant in December 2004, in the amount of \$21,251.00. There is no evidence in the record to show that this lien has been released. (*See* Government Exhibit 8).

A federal tax lien filed in September 1995 for back taxes owed in the amount of \$14,889.00 has been paid and was released in 1999. (*See* Government Exhibit 6).

A debt owed to the California Franchise Tax Board in the amount of \$2,721.21 for delinquent taxes, interest and penalties for tax years 2002, 2004 and 2005 has been paid in full through a garnishment and is no longer owing. (Tr. p. 47 and Applicant's Post-Hearing Exhibit B).

Five medical bills totaling approximately \$949.00 that have been placed into collection are still outstanding. The Applicant explained that all but \$200.00 of this debt was incurred by his ex-wife after he was divorced from her and she was remarried. He does not know why she used his name. (Tr. p. 50). The Applicant explained that his health insurance should have paid the bill but the hospital did not properly contact them for payment. He has Mail Handlers Medical Benefit Plan, the military Tricare Insurance coverage and Medicare. In the event that his insurance plans do not pay the \$200.00 debt, he will pay it before the end of the year. (*See* Tr. p. 54 and Applicant's Post-Hearing Exhibit B).

The Applicant is disputing a debt owed to a bank in the amount of \$1,212.00. He stated that he initially used the card, paid off the balance, and tore it up as he no longer wanted the credit card. He does not believe that he owes the debt and will contact the credit agencies concerning the dispute.

A debt owed to another bank in the amount of \$32.00 was placed into collection, however, the Applicant learned after contacting the creditor that there is no balance on the account.

The Applicant plans to contact the creditor and set up a payment plan in regards to a debt owed to SST/AIB in the amount of \$4,592.00 for an account charged off following voluntary repossession of his vehicle.

A debt owed to HSBC NV in the amount of \$241.00 has been charged off. The Applicant believes that he paid off the debt in 2002/2003.

The Applicant is current with all of his monthly bills. (Tr. p. 66). He started working with a credit counselor, but became leery when the payments he was making to them were not being credited towards his debts and the consumer credit counselors' address kept changing. (Tr. p. 67).

### **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 obligation;

#### 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’s poor financial history was primarily caused by his failure to withhold the proper taxes from his retirement pensions and his divorce and its related problems. In addition, his efforts to sell his house have only caused more financial difficulties for him. At the present time he has approximately \$50,000 in delinquent debt. However, he has addressed these debts by setting up payment plans and making regular monthly payments toward the debts. The one debt that he has not paid, he plans to pay soon. Under the circumstances, he has made a good faith effort to resolve his indebtedness, and there is evidence of financial rehabilitation. The Applicant has demonstrated that he can properly handle his financial affairs.

In the event that the Applicant does not continue to pay his taxes and arrange for the proper tax withholdings in order to avoid future financial problems, and if he does not pay off his other debts accordingly, his security clearance will once again be in immediate jeopardy. Under Guideline F (Financial Considerations), Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts; 19(c) a history of not meeting financial obligation; 19(e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, 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).*

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.

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### **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.  
Subpara. 1.f: For the Applicant.  
Subpara. 1.g: For the Applicant.  
Subpara. 1.h: For the Applicant.  
Subpara. 1.i: For the Applicant.  
Subpara. 1.j: For the Applicant.  
Subpara. 1.k: 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