

DATE: October 20, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-11827

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's wilful failure to file his federal and state income tax returns for tax years 1995, and 1999 through 2002, in a timely fashion has caused excessive financial tax indebtedness and other financial problems that he has not resolved or mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On February 9, 2004, 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 March 16, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 26, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 26, 2004. On July 23, 2004, two days prior to the scheduled hearing, the Applicant requested a continuance. Applicant's request for a continuance was denied. At the hearing the Government presented thirty exhibits. The Applicant presented no exhibits, but he testified on his own behalf. The record was left open after the hearing to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted one Post Hearing Exhibit, consisting of eleven enclosures of thirty-five pages. The official transcript (Tr.) was received on August 17, 2004.

**FINDINGS OF FACT**

The Applicant is 64 years old. He is unmarried, and has a Bachelors Degree in Electrical Engineering. He is employed by a defense contractor as an Electrical Engineer and is applying for 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.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he violated a federal statute, 42 United States Code, Section 4203 and a state Revenue and Tax Code Section 19701.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant has been employed in the defense industry off and on from 1976 until the present. Over the past twenty years, the Applicant has on numerous occasions failed to file his federal and state income tax returns in a timely fashion. He also failed to file his federal and state income tax returns for tax years 1995, and 1999 through 2002. This has resulted in accrued delinquent back taxes that he has not been able to pay off.

From 1990 to 1992, the Applicant went through a divorce with his wife. In 1993, he was laid off from his job. In 1995, he was rehired. The Applicant testified that he is a poor man and that he pays very high child support. (See Tr. p. 41 and Government Exhibit 26). He has not had the money to hire a tax preparer to file all of his delinquent returns. He also donates heavily to churches and other religious organizations. He drives a fourteen year old car. He stated that he has filed several of his delinquent tax returns, for tax years 1995 through 2000, but he has still not filed his federal or state income tax returns for tax years 2001 through 2004. Before his divorce, his wife was diligent in seeing to it that the Applicant did things that he didn't do well on his own, such as making sure the income tax returns were filed. However, the Applicant admits that they still had problems filing their taxes before the divorce. After the divorce, the Applicant has struggled with completing these tasks alone. The Applicant admits that he has had difficulties with tax forms. (Tr. p. 68). He states that he has always paid his taxes, his problem is with filing his income tax returns on time.

Since about 1998, the IRS and the Franchise Tax Board have been garnishing the Applicant's wages to pay for his delinquent back taxes. (See Government Exhibit 24). The Applicant is uncertain as to what he currently owes the IRS or the Franchise Tax Board.

Numerous federal tax liens have been filed against the Applicant for delinquent back taxes. In 1991, a federal tax lien was filed against him for tax year 1986, in the amount of \$43,015.59. (See Government Exhibit 9). In 1992, a federal tax lien was filed against him for tax year 1987, in the amount of \$40,424.59. (See Government Exhibit 11). In 1993, a federal tax lien was filed against him for tax year 1988, in the amount of \$13,968.46. (See Government Exhibits 7 and 12). In 1994, the IRS filed a federal tax lien against him for tax years 1991 and 1992, in the amount of \$10,14650. (See Government Exhibit 13 and 14).

In 1998, the Franchise Tax Board also filed a state tax lien against him in the amount of \$12,348.75 for delinquent back taxes owed for tax year 1996. (See Government Exhibit 20, 21, 22, and 23).

The Applicant is also indebted to a number of other creditors including a physician, in the amount of \$229.00, a medical association in the amount of \$242.00, and a bank in the amount of \$734.00.

Applicant's Post Hearing Exhibit indicates that he recently filed his state income taxes for tax years 1999 and 2000. Assuming that these returns have been filed, his returns for 2001 and 2002 have still not been filed. The most recent documentation in the record from the state taxing authority, an earnings withholdings order dated July 2004, indicates that the Applicant owes approximately \$17,670.41 to the state. (See Applicant's Post Hearing Exhibit and Government Exhibit 25).

The most recent documentation from the IRS dated September 2003, indicates that no federal income tax returns were filed by the Applicant for tax years 1995, 1999, 2000, 2001 and 2002. It also indicates that the Applicant has unpaid taxes for 1991 and 1992, which were years that he did not file a tax return.

### **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)**

##### **Conditions that could raise a security concern:**

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

##### **Conditions that could mitigate security concerns include:**

None.

#### **Guideline J (Criminal Conduct)**

##### **Conditions that could raise a security concern:**

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

##### **Conditions that could mitigate security concerns:**

None.

#### **Guideline E (Personal Conduct)**

##### **Conditions that could raise a security concern:**

4. Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.
5. A pattern of dishonesty or rule violations, including violations of any written or recorded agreement made between the individual and the agency.

##### **Condition 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, 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 financial irresponsibility criminal conduct and personal misconduct 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 or 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), engaged in criminal conduct (Guideline J) and poor personal conduct (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.

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.

The Applicant has a twenty years history of financial difficulties and serious tax indebtedness. Some of his financial problems were brought on by his divorce and his job lay off. Most of his problems, however, were caused by his own procrastination and financial mismanagement. He did not file his income tax returns on any regular basis, allowing back taxes to accumulate over the years. Numerous tax liens have been filed against him by the IRS and the state taxing authorities. His wages are currently being garnished to pay his back taxes. He has filed some of his income tax returns but not all of them. It appears from the record that he still has actually not filed his federal income tax returns for 1995,

1999, 2000, 2001 and 2002, nor has he filed his state income tax returns for tax years 1999, 2000, 2001 and 2002. The state taxing authority and the IRS do not have record of these filings. The Applicant also owes several creditors that have been delinquent for several years and has made no attempt to pay the debts. He has made some bad financial decisions. By ignoring his tax indebtedness and other creditors for several years, the Applicant has shown poor judgment and unreliability. He states that he is now trying to get himself back on track with his tax responsibilities, but he has only just begun the process.

Under Guideline F, disqualifying conditions *1. A history of not meeting financial obligations, and 3. An inability or unwillingness to satisfy debts* apply. None of the mitigating factors apply. Under Guideline J, disqualifying conditions *1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged, and 2. A single serious crime or multiple lesser offenses* apply. None of the mitigating factors apply. Under Guideline E, disqualifying conditions *4. Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail, and 5. A pattern of dishonesty or rule violations, including violations of any written or recorded agreement made between the individual and the agency* apply. None of the mitigating factors apply.

The Applicant has excessive financial indebtedness that he has failed to resolve. His conduct shows very poor judgment. Presently, the Applicant is not sufficiently responsible or trustworthy to hold a security clearance. Accordingly, Guideline F (Financial Considerations), Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) are found against him.

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, 2 and 3 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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

**DECISION**

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

DARLENE LOKEY ANDERSON

Administrative Judge