

DATE: July 21, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-27267

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's failure to pay his federal income taxes for many years has resulted in excessive financial indebtedness that he has not mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On December 15, 2003, 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 January 17, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on April 7, 2004. A notice of hearing was issued on April 27, 2004, scheduling the hearing for June 8, 2004. At the hearing the Government presented thirteen exhibits. The Applicant presented eight exhibits. He called one witness. He also testified on his own behalf. The official transcript (Tr.) was received on June 25, 2004.

**FINDINGS OF FACT**

The Applicant is 55 years old. He is employed by a defense contractor as a Network 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 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.

In 1991, the Applicant retired from the United States Air Force as an E-6 and he began having financial problems. He was unemployed for about six months. He testified that with the defense cutbacks he was unable to find adequate employment. The jobs he did get paid slightly above minimum wage. Consequently, he fell behind on his bills and incurred federal and state tax deficiencies.

The Applicant's wife worked as an interpreter for the county and was considered to be an independent contractor, which meant that no taxes were being deducted from her earnings. Between 1992 and 2003, the Applicant and his wife did not pay quarterly taxes, make income tax payments on a regular basis, or file their income tax returns in a timely basis. He testified that depending on his earnings for the year, he paid as much in taxes as he could afford. (Tr. p. 61). In February 2001, the Applicant stopped making any payments to the IRS. Since then he has not made any payments towards his delinquent tax debts. (See Government Exhibit 7).

The Applicant testified that his financial situation got so bad that his house almost went into foreclosure. (Tr. p. 38). Fortunately, he was able to get a loan from the credit union to get him out of foreclosure. In 1998, he was hired for the position he currently has that has helped his financial situation.

At some point, the Applicant realized that by not filing his income tax returns or paying his back taxes, he might get into trouble for tax evasion. He stated that with the help of some friends he finally got a clear head and decided to get caught up on his back taxes. He filed his income tax returns, and started to try to pay off what he could of his back tax indebtedness. (Tr. p. 37). He had some money saved up and paid as much towards his delinquent back taxes as he possibly could. The payments he made, however, were never enough, because they were late, and the interest out-paced what the payment was. (Tr. p. 37). Unfortunately as the years passed, the Applicant became more and more indebted to the Internal Revenue Service for delinquent federal taxes. The Applicant presently owes an approximate amount of \$110,000. This debt remains outstanding. (See Government Exhibit 10 and Applicant's Answer to the SOR).

Several years ago, the Applicant went to an IRS open house for help and was told that he could discharge some of his tax liability by filing bankruptcy. (Tr. p. 63). The Applicant did not want to file bankruptcy. (Tr. p. 65).

After July 2003, the Applicant's wife's employment status changed from an independent contractor to an employee. Income taxes are now being deducted from her earnings. The Applicant has not yet filed his federal income tax returns for tax years 1991, 1992 and 1993, but he plans to do so soon.

The Applicant testified that he hired a certified tax attorney who is presently handling his appeal with the IRS. His attorney has also prepared and submitted an Offer of Compromise to the IRS, asking to settle the matter for \$950.00. (See Tr. pp. 64-65 and Applicant Exhibit G).

The Applicant intends on paying all of his back taxes. He has never intended on skipping out on his bills. (Tr. p. 65).

## 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 E (Personal Conduct)

Condition 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 and criminal 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 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) and has engaged in 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.

Following his retirement in 1991, the Applicant experienced serious tax indebtedness. Some of his financial problems were brought on by his inability to find a good paying job. Most of his problems, however, were caused by his own financial mismanagement. He did not pay his taxes on any regular basis, allowing them to accumulate over the years to become enormous. For the last two years, he has paid nothing toward his indebtedness. He has made some bad financial decisions. He was even advised by the IRS that bankruptcy might be an option to resolve his problems. He has failed to do that. By ignoring his tax indebtedness over the 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.

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) 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 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.

Paragraph 2: 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