

DATE: June 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02306

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's failure to file federal income tax returns for tax years, 1994, 1997, 1998, 1999, 2000 and 2001, and his failure to pay his delinquent federal and state back taxes, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On December 3, 2003, 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 in writing on January 15, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 26, 2004. A notice of hearing was issued on April 14, 2004, scheduling the hearing for May 19, 2004. At the hearing the Government presented seven exhibits. The Applicant presented three exhibits and testified on his own behalf. The official transcript (Tr.) was received on June 9, 2004.

FINDINGS OF FACT

The Applicant is a 55 years old and unmarried. He is employed by a defense contractor as a Mathematician 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 lived in State A until 1993. From 1993 until 1997 he lived in State B. He returned to State A in 1997. In 1991, the Applicant separated from his wife. In 1993, they went through a "nasty" divorce. During this time, the Applicant made an early withdrawal from his IRA. Residual anger and depression brought on by the divorce caused the Applicant to procrastinate and ignore his annual income tax filings. He held his life together during this period by compartmentalizing, focusing only on his work, doing technical computing things. As a result of his emotional state, he did not file his federal income tax returns for tax years 1994, 1997, 1998, 1999, 2000 and 2001. The Applicant claims that he has calculated and paid what he thought he owed based upon his past salary and assorted past calculations. He further claims that he has sent in checks to the Internal Revenue Service (IRS) to pay the taxes. (*See Government Exhibit 2*). Since then, he has undergone counseling to deal with his anger and depression. (*See Applicant's Exhibit A*).

A tax lien was issued against the Applicant by State B in August 1998 in the approximate amount of \$608.01 for unpaid state taxes for tax year 1994. (*See Government Exhibit 6*).

A second tax lien was entered against the Applicant in March 2003, in the approximate amount of \$41,077.00 for unpaid federal taxes. (*See Government Exhibit 4*).

An earnings withholdings order was entered against the Applicant in June 1997 by State A in the approximate amount of \$2,176.16 for unpaid state taxes for tax year 1993. (*See Government Exhibit 5*)

From November 2000, through June 2001, the Applicant's wages were garnished by State A in the approximate amount of \$7,801.29 for unpaid state taxes for tax year 1998. (*See Government Exhibit 7*).

The Applicant believes that he presently owes the IRS between \$40,000 and \$50,000 dollars in back taxes. He is not sure what he owes State A and State B. During the periods in which he lived in State A and State B he did not file his annual state income tax returns.

Last spring, the Applicant hired a tax consultant and they are presently negotiating with the IRS to adjust the amounts owed and pay them off. Since December 2003 or January 2004, the Applicant's salary has been garnished in the amount of \$1,400.00 dollars per week. He anticipates that the debt to the IRS will be completely paid off in a few months. He is presently concentrating on the IRS instead of State A and State B because the debt to the IRS is the largest. Once the IRS debt is paid, he will move on to pay the debt to State A and State B. The Applicant has not yet filed his income tax returns for tax years 2002 and 2003.

The Applicant intends on paying all of his delinquent back taxes. He is sharing a home with friends of his who are allowing him to have a large amount of his paycheck garnished each week in order to pay off his tax delinquencies sooner. (*See Applicant's Exhibit B*). His net income is approximately \$150.00 a week. (*See Applicant's Exhibit C*).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

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.

Condition that could mitigate security concerns include:

3. The conditions that resulted in the behavior were largely beyond the persons control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

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 eligible for a security clearance. 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

The Government must make out a case under Guideline F (Financial Considerations), and that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

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.

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations set forth under Guideline F and they have has a direct impact on his suitability for access to classified information.

The Applicant has admitted each of the allegations listed in the SOR. It can be argued that the Applicant's divorce in 1993, and his depressed emotional state from it caused the Applicant to procrastinate and ignore his fiscal responsibilities to file his annual tax returns and pay his taxes. However, eleven years later, even after obtaining counseling for his emotional condition, and after hiring a tax consultant, there has still been no good faith effort or a systematic pattern of payment to improve his financial situation. He continues to owe his taxes and has still not filed his annual income tax returns for tax years 1994, 1997, 1998, 1999, 2000 and 2001. His wages are being garnished at a significant level. He intends to pay his delinquent tax debts. However, at the present time, he owes between \$40,000.00 and \$50,000.00 in back federal taxes. He may also owe State A and State B but is not sure of the amount. For too many years he simply ignored his financial responsibilities. The divorce cannot still be to blame for such a long period of irresponsibility. The Applicant remains in a position where he poses a potentially serious risk to the national security. Until his annual income tax returns are filed, and/or his back taxes are paid or substantially reduced showing that payment in full is imminent, and the Applicant shows that he has changed his way of handling his financial affairs, demonstrating a pattern of responsibility and good judgment, he is ineligible for access to classified information. None of the mitigating factors apply. Accordingly, Guideline F (Financial Considerations) is found against the Applicant.

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.

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: 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