

DATE: July 25, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 05-05441

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's financial indebtedness remains unpaid and excessive. Financial rehabilitation has not been shown. Clearance is denied.

**STATEMENT OF THE CASE**

On January 19, 2006, 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 April 13, 2006, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 12, 2006. A notice of hearing was issued on May 18, 2006, scheduling the hearing for June 15, 2006. At the hearing the Government presented fifteen exhibits. The Applicant presented twelve exhibits. He also testified on his own behalf. The record was left open to allow the Applicant the opportunity to submit additional supporting documentation. The Applicant submitted no additional documentation. The official transcript (Tr.) was received on June 27, 2006.

**FINDINGS OF FACT**

The following Findings of Fact are based on the Applicant's Answer to the SOR, the exhibits and the Applicant's testimony. The Applicant is 52 years old, married, and has a high school diploma and one year of college. He is employed by a defense contractor as a AGE Support person and is seeking to obtain his 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 admits the delinquent debts set forth in allegations, 1(a), 1(b), 1(e), and 1(f) of the SOR. He denies the delinquent debts set forth in allegations 1(c) and 1(d). (See Applicant's Answer to the SOR).

The Applicant and his wife have been married since 1989. The Applicant has two adult boys, two girls, and one three year old girl that he is in the process of adopting. He acknowledges that over the years, support and shelter for his children have been his priority. This responsibility has often conflicted with his ability to pay his other bills. For example, in 1993, his child support payments escalated to approximately \$1,700 a month. (See Applicant's Exhibit E and F). This caused him to be unable to pay his mortgage as well as his other bills. To increase his monthly income, he started taking more tax exemptions. These exemptions were not permitted by the taxing authorities and as a result the Applicant owes back taxes that he has not been able to pay. (Tr. P. 37). On December 8, 1993, the Applicant filed Chapter 13 bankruptcy. At some point the Chapter 13 was converted to a Chapter 7 and the case was ultimately dismissed. The Applicant claims that he refinanced his home and was able to pull out enough equity to pay off some of his bills. A judgment against him in the amount of \$22,776.00 was paid in full. (See Applicant's Exhibit D, and Tr. p. 62). A debt in the amount of \$10,000.00 has also been satisfied (See Applicant's Exhibit C).

The Applicant contends that he has paid off about \$60,000 in debt since October 2005. He still currently owes the Internal Revenue Service for tax years 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000 and 2001. He believes that he presently owes about \$60,000 in back taxes which fluctuates due to accruing interest. (Tr. p. 81). He has paid his current tax preparer over \$3,000.00 to file his tax returns. (See Applicant's Exhibit A). He testified that he is currently in the process of negotiating a settlement agreement. His first offer of settlement was rejected. (See Applicant's Exhibit B, and Tr. pp. 40- 41).

The Applicant also admits that he owes about \$1,000.00 to a creditor that has not been paid but he intends to pay the debt in the near future. He explained that he did not address this debt yet as he was focusing on the larger debts first.

The Applicant is no longer paying child support but he continues to support his oldest child. He testified that at the end of the month, he only has a few dollars left which corroborates his financial statement.

### 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.

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 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). 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. With respect to his finances, the Applicant has in excess of \$61,000.00 in delinquent debt. Although he states that he has paid off about \$60,000 in debt, he remains excessively indebted, with no method as to how these debts will be paid. Furthermore, until he reaches a settlement agreement and actually pays the IRS, he continues to owe back taxes for tax years 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000 and 2001.

There is some evidence in the record that he has made or is making some effort to pay off his past due creditors or resolve his financial indebtedness. However, upon review of his financial statement, it appears that he has only a small remainder of money left at the end of the month, and obviously cannot afford to pay his past due debts. There is insufficient evidence of financial rehabilitation at this time. All but two of the debts listed in the SOR remain owing, and he remains heavily indebted. Under Guideline F (Financial Considerations), Disqualifying Conditions (1) *A history of not meeting financial obligations*, and (3) *Inability or unwillingness to satisfy debts* apply. None of the mitigating conditions (MC) apply. His financial problems remain current, (MC)1; they are not isolated, (MC) 2; and the Applicant has not initiated a good faith effort to repay his overdue creditors or otherwise resolve his debts (MC) 3. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

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 Paragraph 1 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.

### **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