



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-17881  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Edmunds, Department Counsel  
For Applicant: *Pro Se*

September 24, 2008

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**Decision**

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LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) and his Questionnaire for National Security Positions (SF-86) dated April 23, 2007. On April 11, 2008, 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 a date uncertain, and on May 12, 2008, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on May 28, 2008. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 9, 2008, and he submitted no reply. The case was assigned to the undersigned for resolution on September 15, 2008. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

## FINDINGS OF FACT

The Applicant is 61 years old. He is employed by a defense contractor, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

Applicant has a history of financial problems. The Applicant's financial affairs of the past include a Chapter 13 Bankruptcy filed in May 27, 1997, which was dismissed on October 15, 1999. (See Government Exhibit 7). The reason for the dismissal is not in the record. He again filed for Chapter 13 Bankruptcy on October 21, 1999. This bankruptcy was discharged on April 12, 2005, after completion of the Chapter 13 plan. (See Government Exhibit 8). Applicant indicated that he was forced to file bankruptcy because in January 2000, his daughter and three grandchildren moved in with him causing financial hardship. He explained that as a result of a crisis, the youngest grandchild was left severely handicapped, and his oldest grandchild and daughter were in therapy for post traumatic stress syndrome. During this period, he did not pay his income taxes because he needed the money to survive. The Applicant claims that after his daughter and grandchildren moved out in August 2006, he decided to clear up his delinquent taxes.

The Applicant owes approximately \$32,400.00 in unpaid taxes to the Federal and State tax authorities. The IRS filed a tax lien against the Applicant for \$31,756.00 for unpaid taxes due for years 1999, 2000, 2001, 2003 and 2004. On April 3, 2007, Applicant entered into a payment plan with the IRS to pay these taxes at \$751.00 per month. Applicant made three payments and stopped, because he could not afford the payments. The IRS has applied tax returns totaling approximately \$3,700.00 from tax years 2005, 2006 and 2007 to Applicant's unpaid taxes. The Applicant is not currently making any payments toward these back taxes. The Applicant owes the State approximately \$634.00 for tax year 2004. The Applicant indicates that there have been some adjustments to the amount owed based upon his 2007 income tax refund that was applied to the debt. (See Government Exhibit 3, p. 2 and 9, and Exhibit 4). He did not indicate how much of the debt was reduced, if any.

The Applicant indicates that he has been in contact with a tax advocate to help lower the payment owed to the IRS and to clear up the tax lien. Presently, the Applicant is not making any payments toward his outstanding federal tax debt.

Applicant's personal financial statement indicates that after paying his monthly expenses without paying any of his delinquent debt, he has a negative remainder of \$500.00. (See Government Exhibit 6 at p. 28). In his response to interrogatories dated February 26, 2008, the Applicant provided no evidence to show that he has made any payments toward his state back taxes. (See Government Exhibits 6).

## POLICIES

Enclosure 2 and Section E.2.2. 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:

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 difficulties that 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 continued 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 engaged in financial considerations (Guideline F). The totality of 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.

The Applicant’s “crisis” that he attributes to causing his financial difficulties was not explained in sufficient detail to adequately mitigate his poor financial history. The fact remains that the Applicant’s delinquent unpaid Federal and State taxes have not been resolved. Although he has made an attempt to seek help from a tax advocate, he remains indebted in excess of \$30,000.00. There is no payment plan in place. Based upon the Applicant’s salary and monthly expenses, there is no way that he can afford to

pay his delinquent taxes. He remains excessively indebted without a solution to his financial problems. Under the circumstances, he has not made a good faith effort to resolve his indebtedness, and there is no evidence of financial rehabilitation.

Under Guideline F (Financial Considerations), Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*; 19.(c) *a history of not meeting financial obligation*; and 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. None of the mitigating conditions are applicable. The Applicant has not demonstrated that he can properly handle his financial affairs. This Applicant has not paid and is currently not paying his delinquent taxes. In this regard, he has not demonstrated that he is trustworthy, and that he meets the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline F (Financial Considerations).

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of poor judgement, untrustworthiness, unreliability, lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

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.

On balance, it is concluded that the Applicant has not overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 for 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