

DATE: December 31, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 06-26266
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JOHN GRATTAN METZ, JR**

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant's failure to timely file her Federal income tax returns for several years, the ensuing delinquent debt, and her failure to disclose that debt on her clearance application render her an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

____ Applicant challenges the 7 August 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance because of

financial considerations and personal conduct.¹ Applicant answered the SOR 16 August 2007, and requested a hearing. The case was assigned to me 19 November 2007, and I convened a hearing 10 December 2007. DOHA received the transcript (Tr.) 19 December 2007.

PROCEDURAL ISSUES

Six days before the scheduled hearing date, Applicant requested a continuance until February 2008, to permit her to retain counsel to represent her, because she did not currently have the funds to retain counsel [Appellate Exhibit (App.E. 1)]. In a conference call on 5 December 2007, I denied the request because it was not timely, not to a reasonable date certain, and was contingent on her having funds to retain counsel—itsself a speculative proposition (Tr. 5-9). At hearing, I left the record open until the close of business on 17 December 2007, to allow Applicant to submit copies of any IRS documentation she claimed to have, but which she did not bring to hearing (Tr. 106-108). To date, she has submitted no documentation.

FINDINGS OF FACT

Applicant denied the financial allegations of the SOR. She admitted failing to timely file her Federal income tax returns for 2000-2005, but denied falsifying her clearance application. She has been a 47-year-old instructional designer for a defense contractor since June 2006. She has not previously held a clearance. She obtained her master's degree in education in May 2006.

Applicant's problems with the Internal Revenue Service (IRS) began in 1996, when the IRS filed a \$9,369 tax lien against her for unpaid taxes, penalties, and interest for tax years 1991 and 1992. She failed to file her tax returns for 1991 and 1992 because she listened to a tax protestor who told her that she did not have to file her income tax returns. Applicant received periodic notices over the years, which she largely ignored. In 1999, she submitted an offer in compromise to the IRS that the IRS rejected. She took no further action to resolve this debt.

Applicant does not recall whether she filed her income tax returns for 1993 through 1998, but acknowledges that she did not file her income tax returns from 1999 through 2005 because she knew she owed taxes and did not have the money to pay them. She also acknowledges that she was particularly irresponsible with her finances during this time. She filed her late tax returns in January 2007 (G.E. 2). The income tax refunds she would have otherwise earned for those tax years were sufficient to satisfy the 1996 tax lien, which was released in September 2007. She filed her 2006 tax return in September 2007, within the time permitted by the extensions of time to file she obtained from the IRS.

When Applicant submitted her clearance application in July 2006 (G.E. 1), she answered “no” to two questions (questions 28 a. and b.) asking if she had been 180 days delinquent on any accounts within the last seven years, or was currently 90 days delinquent on any account. Although she had taken no steps to address her tax lien, and knew she had failed to file her income tax returns

¹Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended and modified—most recently in August 2006 (Directive).

for the last six years, she testified—not credibly—that she thought of the lien as dating back more than seven years, and also did not think of debts to the government as debts within the scope of the questions.

In her February 2007 answer to DOHA interrogatories (G.E. 2), Applicant listed her tax lien as well as three other debts to the IRS (SOR 1.b., 1.c., and 1.d.). she testified that she got those figures off IRS documents in her possession, but could not remember whether those figures represented taxes due other than the tax lien or were interim balance figures on the tax lien. She did not bring any IRS records to the hearing other than the lien release, and did not provide a post-hearing submission as she was permitted.

Applicant’s character references (A.E. B) consider her an honest and trustworthy person. It does not appear that they are aware of Applicant’s tax issues.

POLICIES AND BURDEN OF PROOF

The Revised Adjudicative Guidelines list factors to be considered in evaluating an Applicant’s suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant’s security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government’s case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.²

CONCLUSIONS

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Government records reflect over \$19,000 of delinquent debt acquired since 1996, because of her failure to file her federal income tax returns.³

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁴ Her debts were not due to circumstances beyond her control, and she did not act responsibly in addressing her debts.⁵ There is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁶ Her tax lien from 1996 was satisfied by the IRS seizing her income tax returns for some or all of the tax years that she was late in filing. This is hardly a good-faith plan for satisfying her debts.⁷ Applicant currently has one tax year in which she timely filed her tax return, albeit with two extensions. This is against a backdrop in which she failed to timely file her tax returns for eight of the past 14 years, and did not resolve an IRS tax lien for 11 years after it was filed. I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. She deliberately concealed the nature and extent of her tax debts and issues.⁸ Her stated explanations are a fanciful justification for her failure to disclose these issues to the government. Further, none of the Guideline E mitigating conditions apply. There is no evidence demonstrating that she corrected the falsification before being asked about it.⁹ There is no evidence to suggest that Applicant receive bad advice about what she was required to disclose on her clearance application.¹⁰ I conclude Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

³¶19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

⁴¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁵¶20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁶¶20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁷¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁸¶16.(a) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

⁹¶17.(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

¹⁰¶17.(b) the refusal or failure to cooperate, omission or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process . . . [later] the individual cooperated fully and truthfully.

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant
Subparagraph c: Against Applicant
Subparagraph d: Against Applicant
Subparagraph e: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant
Subparagraph c: Against Applicant
Subparagraph d: For 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 Applicant. Clearance denied.

**John G. Metz, Jr.
Administrative Judge**