

DATE: November 13, 2007

In re:

SSN: -----

Applicant for Security Clearance

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)
) ISCR Case No. 07-00967
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**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Stephen C. Coen, Esq.

SYNOPSIS

Between 1987 and 2006, Applicant accrued approximately \$70,000 of debt consisting primarily of unpaid state and federal income taxes. All remain outstanding. Notwithstanding the fact that much of his financial problems were caused by personal tragedies, health crises, and employment downturns, it is too soon to conclude that they no longer pose a security risk. Clearance is denied.

STATEMENT OF THE CASE

On June 14, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) explaining why it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. Applicant answered the SOR on July 7, 2007 and requested a hearing.

The case was assigned to me on August 6, 2007. On August 14, 2007, DOHA issued a notice of hearing scheduling it for September 12, 2007. During the hearing, I received four government exhibits, 11 Applicant exhibits, and Applicant's testimony. At the close of the hearing, I left the record open through September 26, 2007 to allow Applicant to submit additional documents. He then submitted four additional exhibits that I incorporated into the record. DOHA received the transcript on September 20, 2007.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations except those encapsulated in the first sentence of subparagraphs 1.a through 1.f, and 1.i, respectively. I have incorporated them into the record.

Applicant is a 56-year-old married man with one daughter, age 15. His first marriage ended in divorce in 1991. He is a U.S. Navy veteran, serving from 1970 through 1974, and has earned some college credits through the years.

Applicant works in the aeronautical industry as a senior quality engineer. His duties include witnessing the proper operation of flight simulators, and ensuring that trainers are operating them properly. According to his supervisor, he is a valued employee.¹

In 1983, Applicant's three-year-old daughter from his first marriage died after being struck by a drunk driver. He coped with this tragedy fairly well for the first few years.² By the late 1980s, however, he lapsed into depression. He subsequently lost track of "all the things that were important"³ including his finances and his marriage.

By the early 1990s, he had divorced his first wife, and moved to another state.⁴ He then met and married his current wife, whereupon they had a child in 1992. In 1994 Applicant suffered a heart attack. Although he recovered, his condition required ongoing treatment including a major surgical procedure in 1997.

¹Exhibit L, Supervisor's Reference Letter, dated September 19, 2007.

²Tr. 22.

³Tr. 22.

⁴Applicant has lived in three states over the past 20 years, and owes income taxes to each of their respective revenue authorities. From hereinafter, I will refer to the state he lived with his first wife as State 1, the state he lived in from 1990 to 2006 as State 2, and the state he currently lives as State 3.

During this same time, Applicant's wife grew seriously ill, and was bed stricken from 1996 to 1998.⁵ In the late 1990's, his daughter was diagnosed with a rare, life-threatening disorder. It required expensive treatment including two major surgeries. Applicant then lapsed into depression again.

In the 16 years Applicant lived in State 2, he never found a job that was either commensurate with his skills or that paid as much as the job he held in State 1. Some of the jobs he worked during that time provided no health insurance coverage.⁶

As Applicant's problems mounted, he increasingly struggled to pay his yearly income taxes and his medical bills. Subsequently, he grew delinquent on federal income taxes for tax years 1985, 1987 through 1990, 1993, and 1995 (SOR subparagraphs 1.a through 1.c, and 1.d through 1.h). He also grew delinquent on state income taxes from 1988, 1989 (SOR subparagraph 1.c), and several medical bills (SOR subparagraph 1.j, 1.l through 1.p). Currently his federal tax delinquency is approximately \$45,000, his state tax delinquency is \$20,000, and he owes \$650 in delinquent medical bills. Also, he owes \$529 toward the satisfaction of a judgment (subparagraph 1.k).

In 1997, Applicant hired an attorney to help him develop a federal income tax repayment plan.⁷ He was unable to adhere to it.⁸ At or about the same time, he contacted a credit counselor who recommended he file for bankruptcy protection.⁹ After consulting a bankruptcy attorney, he decided not to file because the filing fees were too expensive.¹⁰

In March 2006, Applicant moved to State 3 after accepting the job he holds currently.¹¹ During the last three years in State 2, Applicant's annual income averaged approximately \$25,000. Since moving to State 3, his annual income has averaged approximately \$68,000.¹²

Shortly after the SOR was issued, Applicant retained an attorney to help him resolve his delinquencies. Through his attorney, he contacted the State 1 income tax authority to determine how much he currently owes. SOR subparagraph 1.d alleges he owes \$3,866 to State 1 for tax years 1988 and 1989. Upon contacting the income tax authority, he discovered that he now owes approximately \$16,000 for these tax years.¹³ Currently, he is negotiating a settlement.¹⁴

⁵Tr. 25.

⁶Exhibit B at 3.

⁷Tr. 54.

⁸*Id.*

⁹Tr. 54.

¹⁰Tr. 54.

¹¹Exhibit 1 at 1.

¹²Tr. 58.

¹³Tr. 27, 44.

¹⁴Tr. 44.

Applicant, through his attorney also contacted the Internal Revenue Service. On June 22, 2007, he proposed an agreement whereupon he would pay the IRS \$500 monthly. Also, he formally disputed the IRS' claim that he owes \$45,000. He contends that \$24,000 of his IRS delinquencies are statutorily unenforceable because of their age.¹⁵ To date, the IRS has neither accepted this contention, nor agreed to the installment payment proposal.

As of the date of the SOR, Applicant had not filed federal income taxes for tax years 2003 through 2006. He filed them the day before the hearing. He owes \$926 for tax year 2005.¹⁶ He does not owe any income tax for tax years 2003, 2004, and 2006.¹⁷

Applicant's attorney helped him file State 2 income tax returns for 2004 and 2005. He filed them on September 23, 2007.¹⁸ He owes \$1,876 for tax year 2004 and \$3,738 for 2005.¹⁹ The SOR contains no allegations related to these tax years.

Applicant is in the process of identifying the collection agencies who currently hold the medical accounts.²⁰ He has not yet satisfied any.

POLICIES

The Adjudicative Guidelines, as revised December 29, 2005, and implemented by DoD on September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

¹⁵Tr. 42.

¹⁶Exhibit I at 1.

¹⁷*Compare* Exhibits H through K.

¹⁸Exhibits N and O.

¹⁹*Id.*

²⁰Tr. 31.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”²¹ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Financial Considerations

Under the Financial Considerations guideline, “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.”²² Here, Applicant’s accrual of \$70,000 of outstanding delinquencies triggers the application of Financial Considerations Disqualifying Conditions (FC DC) 19(a) (“inability or unwillingness to satisfy debts”), FC DC 19(c) (“a history of not meeting financial obligations”), and FC DC 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”).

The extraordinary amount of personal tragedy and employment struggles Applicant experienced over the past 20 years adversely impacted his finances. As his delinquencies mounted through the 1990s, he made various concerted efforts to confront them, including seeking legal assistance, and consulting a credit counseling company. His failure to satisfy them resulted not from lack of effort or irresponsibility, but from an inability to pay them. Now that his financial condition has improved, he has renewed his efforts at resolving his delinquencies by retaining an attorney who has developed an IRS payment plan, filed back state taxes, and is in the process of identifying the remaining miscellaneous medical creditors. Financial Condition Mitigating Condition (FC MC) 19(b) (“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances”), FC MC 19(c) (“the person has received or is receiving counseling for the problem”), and FC MC 19(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), apply.

SOR subparagraph 1.i alleges Applicant owes an additional \$6,100 of IRS debt. It does not allege the tax year owed, and Applicant denied it. I conclude the government did not establish the allegation listed in subparagraph 1.i. Therefore, I resolve it in Applicant’s favor.

Whole Person Concept

²¹Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

²²Adjudicative Guideline (AG) Paragraph 18.

From 1985 to 2006, Applicant accrued approximately \$70,000 of delinquent debt. The majority consists of federal and state income tax delinquencies. Regardless of whether \$24,000 may no longer be statutorily enforceable, the accrual of that much delinquent debt, and its longstanding nature are significant negative factors. Their accrual is mitigated somewhat by the horrendous series of personal misfortune Applicant experienced over the years. Moreover, since Applicant's financial well-being began to improve, he has been working with an attorney to resolve his delinquencies. At this point, however, all of his efforts have involved organizing his finances, identifying creditors, and developing payment plans. The IRS, the most significant creditor, has not accepted his proposed payment plan, and he has not yet made any payments to the IRS or any of the other creditors. Also, his state income tax delinquencies are substantially higher than alleged in the SOR. Absent any concrete evidence of debt repayments or a demonstrated track record of financial reform, Applicant's promise to satisfy his creditors has limited probative value, regardless of the credibility of his stated intentions.²³ Evaluating this case in the context of the whole person concept, I conclude Applicant's financial delinquencies remain a security concern.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended, but should he be afforded an opportunity to reapply in the future, having established compliance with a repayment plan, or otherwise addressed his obligations, he may well demonstrate persuasive evidence of his security-worthiness. At this time, however, the granting of a clearance is not warranted.

FORMAL FINDINGS

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| Paragraph 1 – Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a -1.h: | Against Applicant |
| Subparagraph 1.i: | For Applicant |
| Subparagraphs 1.j - 1.p: | Against 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 is denied.

²³ISCR Case No. 01-03055 (March 21, 2002).

Marc E. Curry
Administrative Judge