

KEYWORDS: Financial; Drugs; Personal Conduct

DIGEST: Applicant did not file any federal or state income tax returns between 2000 and 2005. Also, he failed to pay his 1993 state income taxes on time, for which a lien was filed against his property in 2000. Although he filed the delinquent tax returns approximately a year ago, and has been making payments toward the satisfaction of the 1993 income tax delinquency for the past six months, it is too soon to conclude that he has mitigated the financial considerations and personal conduct security concerns. Clearance is denied.

CASENO: 05-13036.h1

DATE: 05/30/2007

DATE: May 31, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 05-13036
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**  
Ray T. Blank, Esq., Department Counsel

**FOR APPLICANT**  
*Pro se*

**SYNOPSIS**

\_\_\_\_\_ Applicant did not file any federal or state income tax returns between 2000 and 2005. Also, he failed to pay his 1993 state income taxes on time, for which a lien was filed against his property in 2000. Although he filed the delinquent tax returns approximately a year ago, and has been making payments toward the satisfaction of the 1993 income tax delinquency for the past six months, it is too soon to conclude that he has mitigated the financial considerations and personal conduct security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 21, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not 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 January 29, 2007, admitting the allegations, and requesting a hearing.

The case was assigned to me on March 12, 2007. I convened a hearing on April 17, 2007. During the hearing, I received nine government exhibits, 10 Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open through May 4, 2007 to allow him to submit additional exhibits. That day, he submitted one additional exhibit, which I marked and received as Exhibit K. DOHA received the transcript on May 8, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ The SOR admissions are incorporated as findings of fact. In addition, I make the following findings of fact.

Applicant is a 38-year-old man with a 13-year-old child. He is a mail room supervisor who oversees four employees and manages two mail rooms. He is well respected at work. According to his boss, he "exhibited integrity and honesty in the performance of his duty."<sup>1</sup> He has performed mail room work for 16 years.

In 1993, Applicant failed to pay his state income taxes. In 2000, the state government obtained a lien against his property in the amount of \$4,026. In approximately December 2005, the government propounded interrogatories to Applicant requesting, among other things, that he provide verification of any payments made toward the satisfaction of the lien. As of February 2006, when he responded to the interrogatories, he had made no payments.<sup>2</sup> He initiated payments in December

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<sup>1</sup>Exhibit G, Reference Letter of Applicant's Supervisor, dated April 10, 2007.

<sup>2</sup>Exhibit 3, Response to Interrogatories, dated February 6, 2006, at 4.

2006. Since then, he has made four payments of \$125 each.<sup>3</sup> There is no record evidence that sets forth the amount of the remaining balance.

Applicant lived in one jurisdiction from 1999 to 2002 (State 1). He moved to an adjacent state in late 2002, where he lived through 2004 (State 2). He did not file his state income tax returns for either state.<sup>4</sup> In 2005, he filed the back income tax returns. He owed no income taxes to State 1, but owed approximately \$1,400 in delinquent income taxes to State 2 for tax year 2004.<sup>5</sup> Since May 2005, he has made three payments totaling \$385 toward this delinquency.<sup>6</sup>

Applicant did not file his federal income tax returns from 1999 to 2005. In February 2006, he filed returns for tax years 1999 through 2001, and 2003 through 2005.<sup>7</sup> It is unclear from the record whether he ever filed for tax year 2002. He owes approximately \$14,000 in back federal income taxes, and has made ten payments since June 2006 ranging from \$200 to \$800.<sup>8</sup>

Applicant's failure to file his income tax returns roughly coincided with his separation from his girlfriend. After she obtained custody of their son, Applicant was afraid that he could no longer report him as a dependent for the purposes of a deduction, which could conceivably have resulted in him owing money.<sup>9</sup>

In 2002, Applicant and his ex-girlfriend sought to formalize their agreement for him to pay child support. He was given the option of making bimonthly payments through the court, or having his wages garnished bimonthly. He chose the latter option.<sup>10</sup> He has never been delinquent. As of May 2006, he had overpaid in the amount of \$63.00.<sup>11</sup>

As of March 2006, Applicant owed a creditor \$391 for a delinquent phone bill. He satisfied it in August 2006.<sup>12</sup>

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<sup>3</sup>Exhibit B, Payment Receipts dated December 15, 2006, March 12, 2007, April 7, 2007; Exhibit K, Payment Receipt dated May 4, 2007.

<sup>4</sup>Answer, dated January 29, 2007, at 1.

<sup>5</sup>Tr. 24.

<sup>6</sup>Exhibit C, Payment Receipts, dated May 6, 2005, December 15, 2006, and March 12, 2007.

<sup>7</sup>See Tax Returns as Listed in Exhibit 3, Response to Interrogatories, at 13 through 24.

<sup>8</sup>Tr. 30; Exhibit A, Receipt of Payments.

<sup>9</sup>Tr. 35.

<sup>10</sup>Tr. 26.

<sup>11</sup>Answer at 9.

<sup>12</sup>Exhibit D, Letter from Creditor to Applicant, dated August 24, 2006.

Currently, Applicant has approximately \$150 remaining each month after expenses.<sup>13</sup> He has invested \$6,000 in a 401k.

Applicant used marijuana approximately eight times in 1998. That summer, he was arrested and charged with possession of marijuana.<sup>14</sup> Following his completion of community service and some Alcoholics Anonymous sessions, the charges were dropped. He has not smoked marijuana since 1998.<sup>15</sup>

In August 2004, Applicant completed a security clearance application (SF-86). He did not disclose the 2000 tax lien as required by Question 36 (*Your Financial Record - Tax Lien - In the past 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?*). At the hearing, he testified that he was unaware of the lien when he completed the SF-86.<sup>16</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. 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.

The following adjudicative guidelines are raised:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Guideline H - Drug Involvement: Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified

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<sup>13</sup>Tr. 42.

<sup>14</sup>Answer at 1.

<sup>15</sup>Tr. 42.

<sup>16</sup>Tr. 38.

information. Drug abuse or dependence may impair social or occupational functioning.

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

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."<sup>17</sup> 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**

Applicant's child support payment history does not represent a security concern. However, his failure to pay his 1993 state income tax, and failure to file his state and federal taxes for six consecutive years between 1999 and 2005, in conjunction with his accrual of a delinquent phone bill triggers the application of Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.2 (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust*).

I have considered all of the mitigating conditions and conclude none apply. Applicant deserves credit for satisfying his phone bill, and filing his back returns. However, he filed his income tax returns less than two years ago after failing to file any for the previous six years, and his payments toward the satisfaction of the delinquencies have been sporadic. Moreover, he still owes in excess of \$17,000 of back federal and local taxes, including his 1993 income tax delinquency. He has not mitigated the financial considerations security concern.

### **Drug Involvement**

Applicant's past marijuana involvement triggers the application of Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*), and DI DC E2.A8.1.2.2. (*Illegal*

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<sup>17</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

*drug possession*). He has not used any marijuana since his arrest nearly ten years ago. Drug Involvement Mitigating Condition E2.A8.1.3.1 (*The drug involvement was not recent*), applies. Applicant has mitigated the drug involvement security concern.

### **Personal Conduct**

Applicant’s omission of information regarding his drug use, in tandem with his omission of the 2000 tax lien from his 2004 SF-86 raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant neither purchased nor sold marijuana for his profit or as part of a wider criminal enterprise. PC DC 2 is inapplicable to Question 29.<sup>18</sup>

With respect to Question 36, PC DC 2 applies without mitigation. Given Applicant’s history of failing to file his income taxes, his contention that he was unaware of an outstanding tax lien was not credible.

### **Whole Person Concept**

Applicant’s drug use no longer poses a security concern. He appears to be financially stable enough to implement and sustain a payment plan to resolve his income taxes. However, his repayment of the tax delinquencies has been sporadic and disorganized. I also remain concerned with his explanation for choosing not to file income tax returns on time, and his falsification of his SF-86. Upon considering these facts in conjunction with the whole person concept, I conclude Applicant has not mitigated the security concerns. Clearance is denied.

### **FORMAL FINDINGS**

Paragraph 1 – Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Paragraph 2 - Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

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<sup>18</sup>In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?

Paragraph 3 - Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Subparagraph 3.c:	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.

Marc E. Curry  
Administrative Judge