

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant's delay in filing his federal tax returns and developing a plan to pay \$40,000 in delinquent federal tax debts established security concerns under both financial considerations and personal conduct. Even after receiving the Statement of Reasons (SOR), he failed to begin a good-faith effort to resolve his tax debts with the Internal Revenue Service (IRS). Notably, he has had a stable and well-paying job in the private sector since 1995. While he states an intent to resolve the tax debts, he has established no formal plan to do so. Applicant did mitigate concerns over his other debts which he paid and established he had no intent to falsify his security questionnaires. Overall, concerns over financial issues and personal conduct persist. Clearance is denied.

CASENO: 05-16779.h1

DATE: 04/30/2007

DATE: April 30, 2007

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In Re:)	
)	
-----)	ISCR Case No. 05-16779
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
KATHRYN MOEN BRAEMAN**

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's delay in filing his federal tax returns and developing a plan to pay \$40,000 in delinquent federal tax debts established security concerns under both financial considerations and personal conduct. Even after receiving the Statement of Reasons (SOR), he failed to begin a good-faith effort to resolve his tax debts with the Internal Revenue Service (IRS). Notably, he has had a stable and well-paying job in the private sector since 1995. While he states an intent to resolve the tax debts, he has established no formal plan to do so. Applicant did mitigate concerns over his other debts which he paid and established he had no intent to falsify his security questionnaires. Overall, concerns over financial issues and personal conduct persist. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 12, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleges specific concerns over finances (Guideline F) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on August 18, 2006; he admitted all allegations with explanation except for a denial of allegations 2.b iii., 2.b. iv., and 2.c. He requested a hearing.

Procedural Issue

After Department Counsel stated the case was ready to proceed on November 2, 2006, the case was assigned to me on November 7, 2006. On November 14, 2006, DOHA issued a Notice of Hearing and set this case to be heard on December 4, 2006, in a city near where Applicant works. However, Applicant did not receive the Notice until November 21, 2006;. He requested the hearing be re-scheduled as he did not get the 15 days advance notice required by the Directive at E3.1.8. On November 30, 2006, I issued an Order cancelling the first date and re-schedule his hearing for Friday January 5, 2007. On November 30, 2006, DOHA issued a Notice of Hearing cancelling the first date and on December 1, 2006, issued a Notice of Hearing² to re-set this case to be heard on January 5, 2007, in a city near where Applicant works.

Department Counsel presented seven exhibits (Exhibits 1-7) which were admitted into evidence without objection. (TR 12-15) Applicant testified and offered two exhibits (Exhibits A-B). To allow Applicant to submit additional documents, I agreed to leave the record open until January 26, 2007. Department Counsel had seven days to submit his comments. (TR 84) After Applicant

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended.

² As the court reporting service reported no copy of this Notice was sent to them, the start of the hearing was delayed from 9 AM to 1:50 PM. (TR 3)

submitted his Exhibits C-G, Department Counsel responded³ on January 30, 2007 and offered no objection to the documents. All Applicant's exhibits were admitted into evidence and the record closed on January 30, 2007. The transcript (TR) was received on January 12, 2007.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 51 years old, has been employed by a defense contractor as a military analyst in State #1 since March 1995. In this job he is deployed all over the world. (Exhibit 1; TR 35-36) He completed a Security Clearance Application (SF 86) on October 17, 2003. Previously, he was employed from September 1993 to March 1995 with another defense contractor on the same contract. He served in the U.S. Army from 1972 to 1993 and had a Secret security clearance. He was granted a Defense Department Secret security clearance in August 1992 which he maintains. (Exhibit 1; TR 43)

Applicant studied at a community college in 2001, but received no degree. (Exhibit 1; TR 42) Applicant married his first wife in 1973 and divorced in 1981; they had two children and Applicant got custody. He married his second wife in 1982; he was divorced in 1985 and paid her alimony of \$1,000 per month. He married his current and third wife in August 1985; she had two children; and they had two children together. (Exhibits 1, 5; TR 31-32; 44-45; 65) Applicant has six children. He is currently supporting one daughter and her three children and has been since January 2005. (Exhibit 5; TR 28-29; 34; 45-46)

Finances and Personal Conduct

In 1993 Applicant was in the Army and supported his family on \$29,000 a year. (TR 28) Applicant now makes approximately \$80,000 from his job and his military retirement. His wife is not currently employed. (TR 29)

Applicant did not file federal income tax returns from 1990 through 1996 nor did he file from 1998 through at least 2004. He never asked for an extension even though he knew he had a legal responsibility to file his taxes. (SOR 2.b.) At his hearing, he could offer no explanation as to why he had not filed these federal returns. He was deployed in 1991 and lived in tents for six to seven months which is why he did not file that year. (TR 20-22; 47-48; 57) He declared, "Once I got into that hole, I didn't think I was going to get out." He now believes he can resolve these tax debts in two or three years. (TR 35; 49-50; 75) He did contact the IRS in 1997 and again in 2000 or 2001. Since the garnishments ended in 2003, he has not contacted the IRS again. (TR 58)

In January 2007 he wrote a letter to IRS to try to obtain copies of his correspondence from

³ In his response Department Counsel noted that Exhibit D indicated that the accountant had prepared tax returns for Applicant but did not confirm that they were filed with the IRS. Applicant did not provide copies of either his federal or state returns for the 1998-2005 period over which the SOR raised security concerns.

1997 and in 2002 or 2003; however, he did not submit any response from IRS. (Exhibit F)

Applicant hired a law firm in November 2005 to handle his tax issues, but they required him to file all his taxes before they would act to arrange a payment plan with the IRS. Consequently, he hired an accounting firm in December 2006 to file his taxes. In January 2007 he testified he believed he owed \$50,000 to the IRS for tax years 1998 to 2005. He could not file for tax years beyond a five limit; the time for him to file with IRS for 1990 to 1995 has expired. He last filed a tax return either in 1996 or 1997. He admitted he also has not filed his state taxes since 1997 and estimated he owed \$3,000 to the state. His accounting firm indicated in January 2007 that they had prepared the tax returns for years 1998 through and including 2005. The firm reported Applicant and his wife owe \$39,785 in federal taxes and \$2,849 for state taxes⁴ in the state where he lives and \$763 for state taxes in another state. (Exhibits 2, 3, 4; TR 22-23; 55-63; Exhibit D)

Applicant signed his 2003 SF 86 and certified that the statements on the form were true and correct. On his SF 86 Applicant was asked in Question 34 if he had any wage garnishments; he disclosed that the IRS had garnished his wages in July 2001 in the amount of \$53,000; he explained that was an estimate. In fact, he owed \$47,000. However, in response to Question 36 on any tax lien, he did not document that he had received a tax lien from the IRS in May 2002. (SOR 2.c.) (Exhibit 1; TR 33-34) In his answer he claimed he did not know he had a tax lien; at the hearing he said he was never given any written notice of the lien. (Answer; TR 23-24, 33-34) Investigation disclosed adverse credit issues in credit reports. (Exhibits 2, 3, 4)

SOR 1.a. Applicant admitted his debt to Creditor #1, the IRS, but stated in August 2006 that he planned to file his back taxes and to pay his tax debt. He stated he had paid over \$45,000 for taxes through the year 1997, but he did not provide documentation showing he had paid that amount. He admitted owing for tax years 1998 to 2005. (Answer; Exhibits 1, 2, 4; TR 54-55)

SOR 1.b. Applicant admitted the IRS filed a tax lien against him in May 2002 for non-payment of federal tax from 1990 to 1995. (Answer)

SOR 1.c. Applicant admitted the IRS filed a tax lien against him in May 2002 for \$2,430 for non-payment of federal taxes for 1996. Those taxes were paid in full and tax lien was released in August 2003. Applicant did not learn about the lien until the security investigator came to talk with him in November 2004 or 2005 and showed him a credit report. (Answer; Exhibits 2, 4; TR 52-55)

SOR 1.d. Applicant's wages were garnished in 2001 to pay for delinquent federal income taxes. (Answer; Exhibits 2, 3, 4) Applicant paid some of his back taxes through this wage garnishment for two years; but his wages are no longer being garnished. (TR 25, 37; 51-52)

⁴ The SOR does not allege any security concern over his unfiled and unpaid state taxes; no SOR amendment was offered to add that as a concern.

SOR 1.e. In October 2005 Applicant paid his debt to Creditor #2, for \$588 for a credit card he applied for and never used. He has another credit card with this creditor that he keeps current. (Answer; TR 26-27; 63-64)

Earlier, after he returned from an overseas assignment, Applicant completed his 1992 National Agency Questionnaire (DD Form 398-2). In response to Question 19e. he did not reveal that he had any significant delinquent debts even though he had debts of \$4,000 to four creditors. At that time he did not have access his credit report before he answered the questions; he did not intentionally falsify his answer. While he was married to Wife #2, she incurred a lot of debts that she did not disclose to him. That behavior led to their divorce. (SOR 2.b.) (Exhibits 4, 7; TR 41-42; 73-74) He disputed the first debt of \$600 as not his debt as he was not able to get his car refinanced after his divorce and returned the car to his wife; he was not responsible for her actions. (Exhibit 7; TR 30) (SOR 2.b.i.)

With respect to his current financial situation, Applicant stated he had six credit cards which he keeps current. His only other debt is for his mortgage. His house is worth \$167,000; and he owes \$124,000. He has owned the home since 1994. He does expend monies on home remodeling. While he had credit problems in the 2000 to 2001 period he resolved his debts with those creditors. (TR 27-28, 38; 41; 70-71) He explained that the late medical bills are due to the method TRICARE uses to pay medical bills. (TR 68) He has been responsible for paying the bills in the household since 1994. His wife is not aware of the extent of the tax issues. (TR 66-67) His current budget reflects monthly income of \$8,300, monthly expenses of \$2,779, and discretionary expenses of \$909. He makes a \$164 investment deposit to his 401K 403B accounts. His monthly remainder is \$4,516. (Exhibit G)

Applicant believes he makes an important contribution through his work. (TR 38-39) His performance evaluation for 2006, signed in January 2007, documents that overall he meets job requirements. With respect to individual job elements, Applicant meets job requirements in job knowledge, quality and quantity of work, and company values. Applicant exceeds job requirements in working relationships and communication skills as well as in time management and initiative. (Exhibit E)

References

Applicant's supervisor for five years reported that he is an "outstanding employee in every respect." He knows that Applicant has made a mistake, but he has confidence in him as a trainer and believes this "mistake" should not be compounded by denying him a security clearance. Applicant has been meticulous in complying with security requirements. He does not believe Applicant would disclose secrets even under stress or duress. (Exhibit C)

An individual who is a GS-14 deputy and has worked with Applicant since 1992 views Applicant as a professional. He has "total trust" in Applicant as he "consistently demonstrates all of the traits that we stress in the Army: honesty; truthfulness, candor and integrity." He recommends him without reservation be allowed access to classified information. (Exhibit B)

An individual who is a GS-15 and has worked with Applicant for 14 years as a co-worker and as government oversight assesses him as having "consistently demonstrated an outstanding level

of professionalism.” His position “requires the highest levels of integrity and honesty.” He has “total trust” in Applicant and recommends that he be granted a security clearance. (Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual’s security eligibility: conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline F - Financial Considerations

***The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

Guideline E - Personal Conduct

***The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant’s access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Financial Considerations

The Government established disqualifying conditions⁵ that could raise a security concern and

⁵ **Conditions that could raise a security concern and may be disqualifying include:** E2.A6.1.2.1. A history of not meeting financial obligations; 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

may be disqualifying including Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy all of his debts. Applicant resolved his dated debts, but he has been very slow to address his responsibility to file and pay his federal taxes for a number of years. Substantial unresolved issues persist with the IRS. He is not in communication with the IRS as to how to resolve his back taxes. He explained his tax lawyers would not address the issue until he had filed all his tax returns. He retained an accountant to do so in January 2007; she confirmed that she had prepared the returns for 1998 to 2005, but did not confirm Applicant had filed them.

Consequently, Applicant does not fulfill mitigating⁶ conditions. While he has developed a plan and hired a tax lawyer in November 2005, he did not hire an accountant until January 2007 to prepare his returns. While he has to travel for his job, he is responsible for managing the bills. His substantial take home pay is approximately \$8,300 per month and his monthly remainder is \$4,500 per month. Yet, the long-standing delinquent tax debts which he acknowledged in 2003 in his SF86 have persisted without any plan for a resolution. Consequently, I conclude that under MC 2, the debts were not isolated as he developed multiple delinquent tax debts.

Under MC 3, there initially were conditions that resulted in his not filing his IRS return in 1991 when he was deployed and living in a tent. However, that defense cannot obscure the many years of subsequent inaction when he failed to file returns. Further, under MC 4, Applicant delayed seeking financial counseling for the tax problems. He waited until January 2007 to hire an accountant to prepare his taxes and gave no clear indications that the problem is being resolved or is under control with the IRS. Under MC 6, an individual is expected to initiate a good-faith effort to repay overdue creditors or otherwise resolve debts. To mitigate Applicant does not have to have erased every tax debt, but he has to present a plan. Here Applicant has demonstrated he is financially responsible in every other way, but he was failed to follow through and demonstrate a plan to resolve these federal tax debts of approximately \$40,000. Thus, Applicant has failed to mitigate these financial concerns as he has provided insufficient evidence that he has a systematic plan to resolve the federal tax debts alleged in SOR 1.a. Through wage garnishment he has paid the other taxes and another debt alleged in SOR 1.b, 1.c, 1.d, and 1.e.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under the Regulation, Appendix 8. It is troublesome that Applicant cannot explain his failure to file and to resolve his federal tax

statements, and other intentional financial breaches of trust; E2.A6.1.2.3. Inability or unwillingness to satisfy debts; E2.A6.1.2.4. Unexplained affluence; E2.A6.1.2.5. Financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

⁶ **Conditions that could mitigate security concerns include:** E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.2. It was an isolated incident; E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); E2.A6.1.3.4. 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; E2.A6.1.3.5. The affluence resulted from a legal source; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

debt when he otherwise provided evidence of positive behavior on the job and improved financial circumstances in his personal handling of other matters. For example, he has otherwise no new delinquent, unpaid debt. Thus, the potential for pressure, coercion, exploitation, or duress is low especially in light of the total confidence his supervisors and overseers express in his competence and integrity. Applicant has greater awareness of financial responsibilities in areas except for his failure to take responsibility to file and pay his back federal taxes. He has stable employment since 1995 in a company where he is valued. In sum, the likelihood of recurrent debt problems is low. He has had a clearance for a number of years, both in military service and in his work for defense contractors. However, I find unexplainable his failure to use his substantial financial resources to develop a plan to resolve these long-standing delinquent tax debts.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated some of his debts and paid some of his past tax debts, but otherwise failed to mitigate the concerns pertaining to his remaining federal financial tax obligations. Substantial evidence supports a conclusion that Applicant is not yet eligible to retain his security clearance based on pertinent factors under the Adjudicative Process. Even after receiving the June 2006 SOR, he failed to set in motion a good-faith effort to resolve his tax debts and develop a plan with the IRS despite his stable and well-paying job. In the light of his history of paying past taxes by wage garnishment, he has not mitigated these security concerns simply by a stated intent to file his taxes and to resolve the tax debts without having established a formal plan.

Thus, I rule against Applicant under SOR Paragraph 1 as he failed to mitigate the allegations in SOR subparagraphs 1.a., but has mitigated allegations in subparagraphs 1.b., 1.c., 1.d, and 1.e.

Personal Conduct

The government provided evidence to support security concerns⁷ over personal conduct in his failure to file his federal income tax returns from 1990 through 1996 and from 1998 through 2004. On the other hand, with respect to his omissions on his two security forms regarding financial questions, I conclude the government did not establish this concern as Applicant demonstrated he had no intent to falsify, so his omissions were not deliberate. Notably, Applicant disclosed significant adverse information regarding his finances in his 2003 SF 86 as he revealed \$53,000 in tax debts in response to question 34. While he admitted he failed to disclose a tax lien in response to question 36, he credibly denied an intent to deceive or falsify. His lack of intent to hide or deceive the government about his financial issues is established by his having revealed the most significant of his debts, his federal tax delinquencies. I find him similarly credible with respect to the financial issues he failed to document on his 1992 security form.

⁷ **Conditions that could raise a security concern and may be disqualifying also include:** 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; E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency;

As discussed above under financial considerations, Applicant failed to provide sufficient evidence to mitigate concerns over his failure to file his federal tax returns as he understand he had a legal duty to do so. While he had a credible explanation for failing to file for one year, he could not himself explain his failure to file in subsequent years.

“Whole Person” Analysis

In addition to the enumerated disqualifying and mitigating conditions, I have considered the general adjudicative guidelines related to the whole person concept under the Regulation, Appendix 8. While Applicant’s did not initially detail all of his financial problems, he has a long history of responsible conduct and has had a clearance for a number of years, both in military service and in his defense contractor work. The potential for pressure, coercion, exploitation, or duress is low. However, the history of other responsible conduct makes his failure to take responsibility for his taxes even more inexplicable.

Considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR paragraph 2 and subparagraph 2.a., but for Applicant on subparagraph 2.b. and 2.c..

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	For Applicant
Subparagraph i.:	For Applicant
Subparagraph ii.:	For Applicant
Subparagraph iii.:	For Applicant
Subparagraph iv.:	For Applicant
Subparagraph 2.c.:	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 the Applicant. Clearance is denied.

Kathryn Moen Braeman
Administrative Judge