

KEYWORD: Financial

DIGEST: Applicant is a 54-year-old employee working for a defense contractor. He has unpaid tax obligations to the federal and state government. Despite filing for bankruptcy twice, he still has unpaid debts. He has not provided evidence to support payments on these financial obligations, nor a repayment plan. Applicant has not mitigated the security concerns arising under financial considerations. Clearance is denied.

CASENO: 06-10663.h1

DATE: 04/11/2007

DATE: April 11, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-10663
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Julie Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant is a 54-year-old employee working for a defense contractor. He has unpaid tax obligations to the federal and state government. Despite filing for bankruptcy twice, he still has unpaid debts. He has not provided evidence to support payments on these financial obligations, nor a repayment plan. Applicant has not mitigated the security concerns arising under financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On October 28, 2005, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On August 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why, under Guideline F (Financial Considerations), DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant.

On September 6, 2006, and September 14, 2006 Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on January 18, 2007. Applicant received a complete file of relevant material (FORM) on January 29, 2007, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.¹ Applicant did not submit any information or written response by February 28, 2007. The case was assigned to me on March 22, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, ¶ 1.a through 1.c are incorporated herein. He denied allegation 1.d and 1.e.² In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 54-year-old mechanic working for a defense contractor. He has been married since 1973, and has no children.³ He has never held a security clearance. He has had steady employment for the past ten years. Applicant has been in his current position since 2003.⁴

In March 1991, he filed his first bankruptcy. The Chapter 13 bankruptcy was converted to a Chapter 7 bankruptcy on April 12, 1991, and discharged on August 7, 1991. Applicant provided no information concerning the events that led to this bankruptcy.⁵

¹The government submitted ten items in support of its contentions.

² Item 4 (Applicant's second response to the SOR, dated September 14, 2006) at 1-3.

³ Item 6 (Security Clearance Application, dated October 28, 2005) at 1-29.

⁴ *Id.*

⁵ Item 10 (Bankruptcy Petition, dated March 4, 1991) at 1-5.

On September 27, 2005, Applicant filed for Chapter 7 bankruptcy. His liabilities totaled \$54,670. This bankruptcy was discharged on or about January 10, 2006. There is no information in the record concerning the reason that Applicant filed for bankruptcy for a second time.⁶

Applicant does not deny that he is indebted to the Internal Revenue Service in the amount of \$3,058 for a federal tax lien filed on or about September 2005. His current credit report confirms this lien. He stated that he is working on a resolution to this problem.⁷

Applicant denied that he was indebted to the state for \$488 for a lien placed on or about July 1992. He also denied that he owed state taxes for the tax year 2004. However, he attached a letter from the state department of revenue that he owes \$503.39 for state taxes for the year 2004. Applicant offered no evidence that he has paid either tax lien.⁸

In his interrogatories, Applicant reported that he is honest and that he is working on a plan with the IRS and the state department of revenue. He emphasized that the bankruptcies are a legal means of discharging debt.⁹

Applicant earns approximately \$3,802.68 a month in gross wages. His net income is \$2,794.50. After his monthly expenses of \$2,642.84, he has a \$5.00 negative remainder. He listed a payment of \$156.66 to a 401(k) loan. He has approximately \$14,000 in his 401(k).¹⁰

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature, extent and seriousness of the conduct and surrounding circumstances; (2) the circumstances surrounding the conduct, to include knowledgeable participation, (3) the frequency and recency of the conduct, (4) the individual's age and maturity at the time of the conduct, (5) the extent to which participation is voluntary, (6) the presence or absence of rehabilitation and other permanent behavioral changes, (7) the motivation for the conduct, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

⁶ Item 9 (Bankruptcy Petition, dated September 27, 2005) at 1-26.

⁷ Item 7 (Applicant's Interrogatories, dated July 24, 2006) at 1-15.

⁸ *Id.*

⁹ *Id.*

¹⁰ Personal Financial Statement, dated 2005.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹¹ The government has the burden of proving controverted facts.¹² The burden of proof is something less than a preponderance of evidence.¹³ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.¹⁴ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵

No one has a right to a security clearance¹⁶ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹⁹ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

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

In this matter, the government has established a prima facie case for allegations 1.a through 1.e. under Guideline F. It produced substantial evidence that Applicant has accrued debt over the years. He admits he owes \$3,058 to the IRS for a federal tax lien. His credit report confirms state tax liens. Consequently, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (a

¹¹ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

¹² ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁴ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁶ *Egan*, 484 U.S. 518, at 531.

¹⁷ *Id.*

¹⁸ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹⁹ Executive Order 10865 § 7.

history of not meeting financial obligations) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. Applicant's debt problems have been ongoing for a number of years. Although a legally permissible method of dealing with debt, Applicant has filed for bankruptcy twice. Thus, he has not established a mitigating condition under FC MC E2.A6.1.3.1 (*the behavior was not recent*) nor FC MC E2.A6.1.3.2 (*it was an isolated incident*).

Applicant presented no information concerning any events that would support FC MC 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) and the individual acted responsibly under the circumstances*).

He has not received financial counseling. Despite the fresh start from bankruptcy, he still has unpaid debt. Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.4. (*the person has received or is receiving counseling for the problem and/ or there are clear indications that the problem is being resolved or is under control*) does not apply.

Applicant is aware of his financial problems. His bankruptcies do not relieve him of a duty to be financially responsible. He has unpaid federal and state tax liens. FC MC E2.A6.1. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply in this case.

The issue before me is not whether Applicant is still legally liable for any or all of his outstanding debts, but whether he has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security clearance decision.

I have considered both the record and Applicant in light of the "whole person" concept. He is a mature individual with a record of steady employment. He has a long history of financial problems. He filed for bankruptcy on two occasions. He still has delinquent state and federal taxes. He has not availed himself of any counseling. He has been indebted over the past 15 years to multiple creditors. His personal budget indicates a negative net remainder each month. This raises doubt as to his ability to pay his tax debts. It also raises the possibility that he will most likely accrue new debt. Applicant has not yet developed a repayment plan pertaining to the tax debts. He has not established a track record of financial stability. Under the whole person concept, I conclude that Applicant has not met his burden of proof in demonstrating his eligibility to hold a clearance.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Noreen A. Lynch.
Administrative Judge