

KEYWORD: Financial

DIGEST: Applicant is a 44-year-old systems administrator and has been employed by a defense contractor since December 2005. He has two outstanding judgments totaling approximately \$20,082. He has not filed federal income tax returns for tax years 1994 to 2005. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

CASENO: 06-20367.h1

DATE: 04/30/2007

DATE: April 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-20367
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old systems administrator and has been employed by a defense contractor since December 2005. He has two outstanding judgments totaling approximately \$20,082. He has not filed federal income tax returns for tax years 1994 to 2005. Applicant has not mitigated the financial considerations security concerns. Clearance is denied.

STATEMENT OF THE CASE

On January 14, 2005, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).¹ On November 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)² detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. The revised guidelines were not provided to Applicant when the SOR was issued.

In a sworn, written statement, dated December 5, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on February 13, 2007. A Notice of Hearing was issued on February 28, 2007, scheduling the hearing for March 22, 2007. The parties appeared at the hearing. Applicant received an earlier version of DoD Directive 5220.6 (Directive) and not the revised AG. The copy was also illegible. Department Counsel provided Applicant with a legible, correct version of the AG. Applicant was provided an additional 30 days to submit an amended Answer. He declined this opportunity. He was offered additional time to prepare for the hearing. Applicant stated that he would be prepared to proceed with the hearing on April 6, 2007.

On March 23, 2007, an Amended Notice of Hearing was issued, scheduling the hearing for April 6, 2007. The hearing was conducted as scheduled. At the hearing, the Government submitted 7 exhibits (Exs. 1-7) and Applicant submitted 14 exhibits (Exs. A-N), all of which were admitted into the record without objection. The transcript (Tr.) was received on April 16, 2007.

FINDINGS OF FACT

Applicant admitted all the factual allegations pertaining to financial considerations under Guideline F cited in the SOR, subparagraphs 1.a through 1.n.³ Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 44 years old and has worked as a system administrator for a defense contractor since December 2005. He is a high school graduate and has about a year and one-half of college. Applicant has held a Secret level security clearance since 1993. He was married from 1992 to 1995,

¹Ex. 1 (Security Clearance Application, dated January 14, 2005).

²Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

³In his Answer to the SOR, Applicant denied the allegation in subparagraph 1.b. However, at the hearing, he admitted the allegation in subparagraph 1.b of the SOR. Tr. 20.

and has a 14-year-old child. His child support payments are approximately \$266 per month, and payments are current.⁴ He earns approximately \$51,000 annually.⁵

In 1972, Applicant's father founded a home security alarm company.⁶ In 1985, Applicant took over the day-to-day operation of the company and his father ceased his involvement. Applicant was unfamiliar with running a business, and he closed the business in 1992.⁷ Applicant had unpaid business-related expenses, which became a personal liability.⁸ He is indebted to the Internal Revenue Service (IRS) on a federal tax lien in the approximate amount of \$16,038 entered in July 1994. The tax lien is for unpaid payroll taxes while the business was operating. There is also an outstanding judgment to a telephone company for services rendered to the defunct company in the approximate amount of \$4,044, entered in April 1993.⁹

Applicant failed to file personal, federal income tax returns for tax years 1994-2005. He testified that he did not file state income tax returns for tax years 1994-2005.¹⁰ He claimed he has paid both federal and state taxes by payroll deductions, and therefore he has been a responsible citizen.¹¹

Applicant submitted copies of IRS Form 2040 EZ for tax years 1997 through 2006 that he purported to have completed. The documents were proffered as evidence that he was entitled to refunds for all of those years. Applicant is of the opinion that the Government owes him money in the form of refunds, based on his completion of tax returns that have not been filed.¹² He will not file the completed tax returns until March 2009, or whenever the government asks for them, whichever is earlier.¹³ He is focusing on reducing his credit card debt, and he will not contact the IRS since he believes they seem to be willing to wait for their money.¹⁴ Applicant testified that he did not file state income tax returns for tax years 1994-2005.¹⁵ He argued that he has paid both federal and

⁴Tr. 49.

⁵Tr. 50.

⁶Ex. 2 (OPM Report of Investigation, Dates of Investigation 1/13/06-1/21/06).

⁷Tr. 38-39.

⁸Tr. 40.

⁹Tr. 21.

¹⁰Tr. 41.

¹¹Tr. 71-73.

¹²Tr. 71-74.

¹³Tr. 42.

¹⁴Tr. 26, 53.

¹⁵Tr. 41.

state taxes by payroll deductions, and therefore he has been a responsible citizen by having done that.¹⁶

On September 8, 2001, he was living at his father's house, when many of Applicant's personal belongings were lost in a house fire.¹⁷ There was no insurance. Applicant then lived in hotels for a period of six months. He purchased new clothing and other necessities. In total, he spent approximately \$12,000 to replace what was lost in the fire.¹⁸ He started incurring debt, and continued to live on his credit cards for the next three years, until they were at maximum levels.¹⁹ During the period, employment was sporadic.

In December 2005, he found steady employment, which enabled him to start paying more than the minimum payment on his credit card debt. From March 2006 to March 2007, he decreased his total debt by \$4,424.²⁰ He expects to have all of his credit cards paid off by September 2009.²¹ He has been diligently paying off his card debt. He believes that in 2009, he will have no more than \$5,000 in credit card debt.²² With his credit card debt now more manageable, he will reach out to his other creditors.

Applicant submitted two letters of recommendation from associates. One associate currently worked with him and has known Applicant since 1992 and stated: "[Applicant] is a knowledgeable and responsible security professional that I am honored to call a trusted peer in the security industry."²³ He has known the other associate since 1983 in both an employment and social capacity. She indicated that Applicant "has always been a truthful, honest and straightforward person."²⁴

POLICIES

¹⁶Tr. 71-73.

¹⁷Tr. 21.

¹⁸Tr. 21-22.

¹⁹Tr. 24.

²⁰Ex. D (Credit Cards and Loans Spreadsheet).

²¹Tr. 24.

²²Tr. 37.

²³Ex. C (Letter, dated 2007).

²⁴Ex. B (Letter, dated April 2, 2007).

“[N]o one has a ‘right’ to a security clearance.”²⁵ As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”²⁶ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁷ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.²⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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 clearance.³⁰

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. 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 adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Financial considerations are a security concern because 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. The

²⁵*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁶*Id.* at 527.

²⁷Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²⁸ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁹*Id.*; Directive, ¶ E2.2.2.

³⁰Exec. Or. 10865 § 7.

Government has established a *prima facie* case for disqualification under Guideline F, financial considerations.

Applicant has failed to file federal tax returns for the tax period 1994 through 2005. He testified that he has not filed state tax returns for the same period of time. Moreover, he has not filed either state or federal tax returns for the tax year 2006. He does not expect to file state or federal tax returns for the tax year 2007. His behavior epitomizes tax fraud and tax evasion. He cannot justify his behavior by proffering completed tax forms that will not be filed until at least March 2009. Moreover, he unrealistically believes that because his plan is to pay off his credit card debt until it is manageable, it is okay for him to wait until March 2009 to resolve his outstanding tax issues with the IRS. He mistakenly believes that by not contacting the IRS regarding his failure to file taxes, the IRS will not inquire about his failure to file taxes. Applicant's behavior of not filing federal and state taxes for over a decade, shows his unwillingness to comply with rules and regulations, which speak to his own personal responsibility with regard to security concerns. The Government places trust in each citizen to file tax returns. It relies on trust, just like providing access to classified information. Applicant has failed to live up to that trust when he decided not to file taxes for more than 10 years. Moreover, there are two outstanding judgments against him, related to a failed business. The federal tax lien for \$16,038 was entered in July 1994. The judgement for an outstanding telephone company debt for \$4,044 was entered on April 7, 1993. Thus, Financial Considerations Disqualifying Conditions (FC DC) 19(a) (*inability or unwillingness to satisfy debts*), FC DC 19(b) (*indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*), FC DC 19(c) (*a history of not meeting financial obligations*), FC DC 19(d) (*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 financial breaches of trust*), FC DC 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, a high debt-to-income ratio, and/or other financial analysis*), and FC DC 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*) apply.

Various factors can mitigate financial considerations. He lost his business in 1994. He was unemployed and underemployed during a period of time and his credit card debt became delinquent. His business closed as a result of poor management, and two business debts of more than \$20,000 became personal liabilities. There was a fire in his residence and his personal possessions were destroyed, which cost him approximately \$12,000 to replace. Based on those facts, Financial Considerations Mitigating Conditions (FC MC) 20(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*) applies. However, Applicant has not filed federal tax returns for the tax years 1994-2005. Thus, FC MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*), and FC MC 20(c) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) do not apply here. Applicant has not mitigated the Government's case. Allegations 1.a through 1.n of the SOR are found against Applicant.

I have considered all the evidence in the case. I have also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests. Applicant has made curious lifestyle choices. While attempting to manage his credit card debt, he has decided to ignore a tax lien and a judgment, both relating to a failed business. Moreover, he has not filed federal or state taxes in more than a decade, even though he believes he is due a federal tax refund for most of those tax years. In balancing all the information of record, I conclude Applicant has not mitigated the security concerns arising from his financial difficulties. Based on the evidence of record, it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant

DECISION

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

Jacqueline T. Williams
Administrative Judge