

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant owes more than \$14,000 in back federal taxes. He has not provided any evidence that he has paid his overdue taxes or that he is currently working to resolve his tax debt. He has not mitigated the government's concerns about this unpaid debt. He has, however, mitigated the government's concerns under allegation 1.b of Guideline F and Guideline E. Clearance is denied.

CASENO: 06-20534.h1

DATE: 07/17/2007

DATE: July 17, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-20534
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

J. Theodore Hammer, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owes more than \$14,000 in back federal taxes. He has not provided any evidence that he has paid his overdue taxes or that he is currently working to resolve his tax debt. He has not

mitigated the government's concerns about this unpaid debt. He has, however, mitigated the government's concerns under allegation 1.b of Guideline F and Guideline E. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 27, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR sets forth security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On December 11, 2006, Applicant submitted a notarized response to the allegations. He requested a decision on the record.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on April 20, 2007. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. This case was assigned to me on June 28, 2007.

### **FINDINGS OF FACT**

Applicant admitted the allegation under subparagraph 1.a of Guideline F in the SOR.<sup>1</sup> This admission is incorporated as a finding of fact. He denied the remaining allegations.<sup>2</sup> After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact.

Applicant, who is 63-years-old, works as an electronic technician for a Department of Defense contractor. He has held this position for over three years. He submitted an application for a security clearance (SF-86) in September 2005.<sup>3</sup>

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<sup>1</sup>Item 3 (Applicant's response to the SOR, dated December 11, 2006) at 1-2.

<sup>2</sup>*Id.*

<sup>3</sup>Item 1 (Applicant's Security Clearance Application, dated September 26, 2005) at 25.

Applicant was born in State A. He married in 1984 in State B. His two daughters, age 22 and 19, reside in State B. His residences listed on his SF-86 reflect that he has resided in State B for the last nine years at least. His SF-86 indicates that he has worked in State B for the last nine years. His mother, brother and sisters reside in State B. The three individuals listed as knowing him well for the last 37 to 49 years reside in State B.<sup>4</sup>

The Internal Revenue Service (IRS) filed a tax lien, date unknown, in the amount of \$14,345, which Applicant acknowledges. He admitted that the lien is not paid and stated that he will work with a lawyer to remedy. The evidence of record did not indicate what type of property, real or personal, was the subject of the IRS lien.<sup>5</sup> His credit reports reflected a tax lien filed by State C at some point in time prior to August 1999. Applicant denied any knowledge of this lien. The status of this lien is shown as unknown as of August 1999.<sup>6</sup>

On September 26, 2005, Applicant completed his security clearance application. He answered “no” to the following question:<sup>7</sup>

Section 27: Your Financial Record - Question c:

In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?

Applicant denied that he intentionally falsified his answer to this question, stating that he has no property nor has ever owned any property. This question did not define the meaning of the word “property”.<sup>8</sup>

## POLICIES

The revised Adjudicative Guidelines set forth disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. An administrative judge need not view the revised adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, are intended to assist the administrative judge in reaching fair and impartial common sense decisions. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised AG should be followed whenever a case can be measured against this policy guidance. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent,

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<sup>4</sup>*Id.* at 2-12. His SF-86 does not request information for residences and employment beyond the last seven years.

<sup>5</sup>The SOR indicates that this lien was filed on or about May 2004. Applicant’s October 8, 2005 credit report shows the status of the lien as unknown in May 2004. The credit report does not show the date that IRS filed this lien or the type of property on which the IRS filed the lien. Item 4 (Credit report, dated October 8, 2005) at 2.

<sup>6</sup>*Id.*; Item 5 (Credit report, dated September 25, 2006) at 1; Item 6 (Credit report, dated April 18, 2007) at 1.

<sup>7</sup>Item 1, *supra* note 3, at 23.

<sup>8</sup>*Id.*; Item 3, *supra* note 1, at 2.

and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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.<sup>9</sup>

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.<sup>10</sup> The government has the burden of proving controverted facts.<sup>11</sup> The burden of proof is something less than a preponderance of the evidence.<sup>12</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>13</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>14</sup>

No one has a right to a security clearance,<sup>15</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>16</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>17</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>18</sup> 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.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

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<sup>9</sup>Directive, revised Adjudicative Guidelines (AG) ¶ 2(a)(1)-(9).

<sup>10</sup>ISCR Case No. 96-0277 at 2 (App. Bd., July 11, 1997).

<sup>11</sup>ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

<sup>12</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>13</sup>ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>14</sup>ISCR Case No. 93-1390 at 7-8 (App. Bd. Decision and Reversal Order, Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

<sup>15</sup>*Egan*, 484 U.S. at 531.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*; Directive, revised AG ¶ 2(b).

<sup>18</sup>Executive Order No. 10865 § 7.

## **Guideline F - Financial Considerations**

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. (AG ¶ 18.) Applicant has a significant overdue federal tax debt, which has been unpaid for a number of years. Based on the evidence of record, DC ¶ 19 (a) *inability or unwillingness to satisfy debts*, and DC ¶ 19 (c) *a history of not meeting financial obligations*, apply to allegation 1.a in the SOR. Because the evidence of record does not show the basis for the IRS lien (failure to file a tax return or failure to pay all taxes due and owing on a filed return), DC ¶ 19 (g) *failure to file annual Federal, state or local income tax returns ...* cannot be applied in this case.

I have reviewed all the mitigating conditions set forth in AG ¶ 20 (a)-(f) and conclude that none of them apply because the Applicant has not paid his IRS debt, and has not provided any evidence about this debt, including how it occurred, any contacts with the IRS to pay the debt, or any counseling services. Allegation 1.a is found against the Applicant.

However, the government has not established its case as to allegation 1.b. Although the State C tax lien is listed in Applicant's credit report, this fact is insufficient by itself to establish the government's case in light of his denial of any knowledge of the lien. Credit reports often contain incorrect information. Applicant was born in State A and some time later, probably as a child, moved to State B. The evidence of record reflects that his entire family lives in State B, that he was married almost 23 years ago in State B, that for the last more than nine years, he has lived in State B, and that for the last nine years, he has worked in State B. The record contains no evidence that he ever lived or worked in State C or other affirmative evidence that the credit report information is correct. Given his numerous and lengthy contacts with State B, the listed tax debt is most likely the result of an error by the credit reporting agency.<sup>19</sup> Allegation 1.b under Guideline F is found in favor of Applicant.

## **Personal Conduct**

Under Guideline E, 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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Under DC ¶ 16 (a), the government established that Applicant omitted a material fact from his SF-86 when he answered "no" to question c in Section 27. He denies, however, that he deliberately falsified his answer to this question. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's

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<sup>19</sup>Applicant should challenge the validity of this debt and request its removal from his credit report.

intent or state of mind at the time the omission occurred.<sup>20</sup> For DC ¶ 16 (a) *deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .* to apply, the government must establish that Applicant’s omission, concealment or falsification in his answer was deliberate.

Applicant interpreted the word “property” to mean real property. His interpretation is not unreasonable since the word “property” is not defined in his SF-86, and the average individual talks about property ownership in terms of real property. Property can also include personal property such as bank accounts, stocks, earned wages, or a car. The IRS can lien personal property as well as real property. In this case, the property against which the IRS filed a lien for payment of taxes is not identified. I find that Applicant did not intentionally falsify his answer to question c in Section 27 because he reasonably interpreted the question to mean real property, which he has not and does not own. Guideline E is found in favor of Applicant.

### **Whole Person Analysis**

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. Thus, in reaching this decision, I have considered the whole person concept in evaluating Appellant’s risk and vulnerability in protecting our national interests.

Applicant has a significant unpaid tax lien. He has not done anything to resolve this debt. Because he has not made any efforts to pay this debt and has not provided any evidence as to why this tax lien exists, he has not provided a basis to mitigate the government’s security concerns. His failure to pay or resolve his federal tax debt is not outweighed by the remaining favorable findings. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

### **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:

SOR ¶ 1-Guideline F :	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Subparagraph b:	For Applicant
SOR ¶ 2-Guideline E:	FOR APPLICANT
Subparagraph a:	For Applicant

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<sup>20</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

**DECISION**

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

Mary E. Henry  
Administrative Judge