

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a retired Navy petty officer and has been an employee of defense contractors for about ten years. He has a history of significant financial problems and he is currently unable to pay his delinquent debts totaling more than \$17,000.00. Applicant provided no information demonstrating how his financial problems arose or what he has done to resolve them. Applicant failed to mitigate security concerns arising under the guideline for financial considerations. He has not met his burden of demonstrating that it is clearly consistent with the national interest to grant him a security clearance. Clearance is denied.

CASENO: 06-22633.h1

DATE: 08/29/2007

DATE: August 29, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-22633
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**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49-year-old security officer who has worked for a federal contractor since 2004. He retired from the military in 1995. He failed to pay his taxes in 1995, 1996, 1997 and 1998. The Internal Revenue Service has applied his tax refunds from subsequent years to offset his debt. He has not made any voluntary payments. He also owes more than \$18,000 in back child support. Applicant claimed he has started to make monthly payments, but failed to substantiate any payments. Applicant intentionally failed to divulge his delinquent tax debts. He has failed to mitigate the security concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on March 28, 2007, detailing the basis for its decision—security concerns raised 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.

In a sworn statement dated April 10, 2007, Applicant responded to the SOR and admitted the allegations under Guideline F and denied the allegation under Guideline E. Applicant elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on May 25, 2007. The FORM was mailed to Applicant on June 4, 2007, and received on June 7, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

Applicant’s admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and FORM, I make the following findings of fact:

Applicant is 49 years old and has worked for a federal contractor as a security officer since September 2004. He retired from the Army in 1995. Applicant admitted he failed to pay his federal taxes for the years 1995, 1996, 1997, and 1998. He failed to provide any explanation for why he failed to pay his taxes. He provided a letter from the Internal Revenue Service (IRS) dated May 16, 2005, indicating that a refund from his 2004 taxes was applied to his 1995 tax debt and he had a zero balance.¹ It also showed the remainder of his 2004 refund was applied to his 1998 tax debt, thereby reducing it to \$6,637.² He provided another letter from the IRS dated May 29, 2006, indicating a refund from his 2005 taxes was applied to his 1998 tax debt reducing it to \$1,771.57.³ It does not appear any other payments were made toward his tax debts other than the forced payment of applying his tax refunds to his previous years tax debts. A federal tax lien remains in the amount of \$9,067. Applicant stated in his interrogatory dated December 20, 2006 that: “I will start my payment plan in January 07.”⁴ He provided no information to show he has made any further payments beyond the involuntary IRS action.

¹Item 2.

²*Id.*

³*Id.*

⁴Item 7.

Applicant admitted he owes back child support payments. A notice from the state dated March 31, 2007, stated he owed “at least the amount of” \$18,472.71.⁵ He provided no explanation for why he was in arrears. The notice from the state also advised him if he did not take action on the arrearage he would be subject to enforcement actions. Applicant stated he set up an allotment to pay \$282 a month on this debt. He did not provide any documentation to support his claim.

On his security clearance application (SCA) Applicant responded “no” to question 27c which asked in the last 7 years if he had a lien placed against his property for failing to pay taxes or other debts. Applicant’s explanation for failing to divulge that he owed taxes for several tax years was that because he did not own property he did not think he had to list his tax debts.⁶ The wording of the question specifically asks if there is a lien against his property. If he did not have property it is reasonable that he answered “no” even though he had delinquent taxes. I find he did not intentionally falsify his answer to this question as alleged.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”⁷ 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.”⁸ The President has 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.”⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁰ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹³ It is merely an indication that the applicant has not

⁵Item 2.

⁶*Id.*

⁷*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸*Id.* at 527.

⁹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹¹*Id.*

¹²*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

¹³Executive Order 10865 § 7.

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁴

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.¹⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁶ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁷

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁸ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁹ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”²⁰

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Financial Considerations

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

¹⁴See Exec. Or. 10865 § 7.

¹⁵See *Egan*, 484 U.S. at 531.

¹⁶See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁷See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

¹⁸See Directive ¶ E3.1.15.

¹⁹ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

²⁰*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant failed to pay his taxes for several years and is in arrears on his child support.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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*), 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*), FC MC 20(c) (*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*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's debts are recent and unpaid and he failed to provide any information or tangible evidence that his actions are not likely to recur. He provided no proof that he has made any voluntary payments on either his tax debts or child support debt. Rather the IRS applied overpayments to his delinquent tax debts and the enforcement division of the state's child support agency notified him that action would be taken if he failed to make payments. He stated he started an allotment to pay his child support, but provided no proof that he has actually made a payment. In addition, he provided no explanation as to why he failed to pay his taxes or his child support in the first place and why his taxes have been delinquent for so many years. Although the balance on his delinquent taxes has been reduced, it has not been through a good faith effort. I find none of the mitigating conditions apply.

Personal Conduct

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, 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.

I considered the applicability of Personal Conduct Disqualifying Condition (PC DC) 16(a) (*deliberate omission, concealment, or falsification of relevant 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*). I previously found Applicant did not deliberately falsify information when he responded "no" to Question 27c which asked if he had a lien placed on his property for failing to pay taxes or other debts. Although he had failed to pay his taxes,

he did not have any property and therefore he answered the question correctly. The question did not ask him if he had unpaid taxes. I find no disqualifying conditions apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under the guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and 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 was 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 Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Because I found Applicant did not intentionally falsify his SCA, I conclude he has mitigated the security concerns under Guideline E, personal conduct. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2. Guideline E:	FOR APPLICANT

Subparagraph 2.a:

For Applicant

DECISION

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

Carol G. Ricciardello
Administrative Judge