

DATE: October 26, 2007

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In re:	)	
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-----	)	ISCR Case No. 06-23114
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

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**DECISION OF ADMINISTRATIVE JUDGE  
DAVID M. WHITE**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le'i, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant owes more than \$15,400 in delinquent state taxes that came due each year from 1986 to 1991. She has not incurred additional delinquent taxes or other delinquent debt in 15 years. Despite a stated intention to resolve these debts, she provided no documentation of such efforts, and no other evidence in mitigation of security concerns raised by her history of, and ongoing inability or unwillingness to meet financial obligations imposed by government regulation. Clearance is denied.

**STATEMENT OF THE CASE**

Applicant applied for a security clearance on March 22, 2006, in conjunction with her employment by a defense contractor. On March 28, 2007, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline F (Financial Considerations), and Guideline E (Personal Conduct), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in two notarized letters, dated April 23, 2007, and May 24, 2007, admitting the truth of the Guideline F allegations. She denied that her “no” answer concerning tax liens placed in the past seven years was an intentional falsification because the liens were placed more than seven years earlier.<sup>1</sup> She did not submit any other matters for consideration in extenuation or mitigation of her admissions. Department Counsel submitted the government's written case on July 11, 2007, including a motion to amend two of the Guideline F allegations<sup>2</sup> and withdrawal of the sole Guideline E allegation<sup>3</sup> in the SOR. A complete copy of the file of relevant material (FORM)<sup>4</sup> was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of her copy of the FORM on August 2, 2007, and returned it to DOHA. She did not submit any further response to the FORM by the September 2, 2007 due date, nor did she request an extension of time to respond. The case was assigned to me on October 5, 2007.

### **MOTION TO AMEND SOR**

In the FORM, Department Counsel moved to amend the SOR by substituting the IRS for the California Franchise Tax Board as the creditor alleged in SOR ¶¶ 1.c, and 1.d, to conform the SOR to her understanding of the evidence.<sup>5</sup> In her earlier answer, Applicant formally admitted the truth of the two allegations in question as originally written, and she did not respond to the motion to amend.

Department Counsel mistakenly argued that these SOR allegations and admissions involved tax liens, when in fact they refer only to tax debts. Department counsel correctly notes that the March 1993 tax lien noted in Items 7, 8, and 9, was placed for federal tax debt, not California state taxes.

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<sup>1</sup>Item 4 at 1 (Applicant’s letter response to SOR, dated Apr. 23, 2007).

<sup>2</sup>The motion sought to substitute the words “the Internal Revenue Service (IRS)” for the words “Franchise Tax Board of the State of California” in describing the creditor in SOR ¶¶ 1.c, and 1.d.

<sup>3</sup>FORM at 4. Department Counsel concurred with Applicant that her 2006 “no” answer was not false in that the alleged tax liens were placed against her in 1993 and 1994, more than seven years earlier.

<sup>4</sup>The government submitted ten items in support of the allegations.

<sup>5</sup>FORM at 2-3, 4-5.

However, there is no evidence in this record that would indicate that the single \$7,515 federal tax lien corresponded to two separate tax debts in the amounts of \$2,295.90 for tax year 1987, and \$3,134.08 for tax year 1988 (totaling \$5,429.98) alleged in SOR ¶¶ 1.c, and 1.d. Nor is there any logical reason to infer the federal lien covers the debts alleged in those two paragraphs but not the one alleged in SOR ¶ 1.b, which also has no corresponding tax lien shown in the evidence.

The requested amendments have no evidentiary support in the record. Nothing indicates that Applicant has federal tax debts of those amounts for those years, and Applicant did not admit the truth of the proposed amended allegations. In fact, Applicant denied knowledge of any delinquent debts other than for California taxes in her response to interrogatories, dated January 10, 2007. The mere fact that a non-alleged federal tax lien was placed against Applicant in 1993 does not provide any proof that the particular facts of the proposed amended allegations are true.

The addition of alleged federal tax debt to taxes owed to a state franchise tax board also would change the nature, not merely the details, of the allegation since Applicant is seeking to enter into a fiduciary relationship with the federal, not state, government. This can not be permitted without a more formal notice and opportunity to respond than is represented by Applicant's failure to reply to the FORM, especially in the absence of any evidence supporting the truth of the proposed amended allegations.

Accordingly, Department Counsel's motion to amend SOR ¶¶ 1.c and 1.d is denied. I do not construe this motion as one seeking to withdraw the original allegations in those paragraphs if they are not amended. The original allegations are supported by Applicant's admissions that they are true, and the Directive only requires independent evidence of controverted facts.<sup>6</sup>

### **FINDINGS OF FACT**

Applicant admitted the truth of the factual allegations set forth in the SOR pertaining to financial considerations under Guideline F (subparagraphs 1.a through 1.d).<sup>7</sup> Those admissions are incorporated herein as findings of fact. After complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 43-year-old self-employed fire protection designer, seeking to obtain a security clearance in connection with subcontract work for a defense contractor.<sup>8</sup> She was married to her first husband from August 1990 to September 1997. She married her current husband in June 2001, and they have one child born in April 2004.<sup>9</sup> Her March 6, 2007, credit bureau report (CBR) reflected

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<sup>6</sup>Directive ¶ E3.1.14.

<sup>7</sup>See Item 3. Although he denied that the statements in SOR ¶¶ 1.a, 1.b, 1.c and 1.d were accurate as of the date of his response, he admitted that he had owed each listed debt and said he had made payments, during February 2007, toward these debts as further specified below.

<sup>8</sup>Item 5 (e-QIP security clearance questionnaire, dated Mar. 22, 2006) at 6, 11.

<sup>9</sup>Item 5 at 14-17.

a total of \$13,552 in revolving and installment debt, on which all payments were current.<sup>10</sup> Her July 3, 2007, CBR showed this total had increased to \$37,414, with the April 2007 addition of slightly more than \$29,000 for “recreational merchandise,” and that all payments remained current.<sup>11</sup>

The two CBRs, and California public records reflect a state tax lien against Applicant (under her maiden name), in the amount of \$9,487.<sup>12</sup> This corresponds to the delinquent franchise board tax debt for tax years 1989, 1990, and 1991, that was alleged in SOR ¶ 1.a, and which she admitted remains unpaid. There is no independent evidence in this record of the delinquent state tax debts for tax years 1986, 1987, and 1988, alleged in SOR ¶¶ 1.b, 1.c, and 1.d, totaling just under \$6,000. However, Applicant also admitted the truth of these allegations.<sup>13</sup>

In her response to interrogatories, dated January 10, 2007, Applicant stated that she had paid all taxes due for the past 15 years, and that her former tax troubles arose from following bad tax advice from her first husband. She further indicated that she was working with her current tax adviser to prepare an offer in compromise to settle her tax debts and resolve the liens. She indicated that she did not then have the funds to make or pay the offer, but should have them within three months.<sup>14</sup> She did not provide either documentation or any update concerning these efforts in response to the SOR or FORM, and the lien remained on her July 2007 CBR.<sup>15</sup> Applicant provided no further evidence in extenuation or mitigation of her financial situation, or concerning her responsibility, trustworthiness and reliability in general.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability.<sup>16</sup> In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs under Guideline F (Financial Considerations) must be considered in deciding whether to grant or deny Applicant's eligibility for access to classified information.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision

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<sup>10</sup>Item 8 at 2.

<sup>11</sup>Item 7 at 3. The CBR reports that the new loan has a \$507 monthly payment.

<sup>12</sup>Item 7 at 1; Item 8 at 1; Item 10 at 1. These CBRs and Item 9 also reflect a 1993 federal tax lien for \$7,515.

<sup>13</sup>Item 4 at 2.

<sup>14</sup>Item 6 at 2-3.

<sup>15</sup>Item 7 at 1.

<sup>16</sup>DoD recently issued an updated version of the Directive containing the revised adjudicative guidelines implemented by the Undersecretary of Defense for Intelligence on Aug. 30, 2006, and made effective for any adjudication in which a SOR was not issued before Sept. 1, 2006.

of the Directive,<sup>17</sup> to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making process is a conscientious scrutiny of a number of variables known as the "whole person concept." All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider, in addition to the applicable guidelines, are: (1) the nature, extent, and seriousness of the conduct; (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.<sup>18</sup>

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.<sup>19</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by "substantial evidence."<sup>20</sup> The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. "Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted."<sup>21</sup> "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision."<sup>22</sup> Once it has met its initial burden of production, the burden of persuasion (including any

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<sup>17</sup>Directive, Enclosure 2, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, dated August 2006, at ¶ 2.

<sup>18</sup>*Id.* at ¶ 2(a).

<sup>19</sup>*Id.* at ¶¶ 2(b), 2(c).

<sup>20</sup>"Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>21</sup>Directive ¶ E3.1.14.

<sup>22</sup>Directive ¶ E3.1.15.

burden to disprove a mitigating condition) never shifts to the government.<sup>23</sup>

A person applying for access to classified information seeks to enter a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 specifically provides that any adverse industrial security clearance decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

### **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."<sup>24</sup>

I have considered all the financial considerations disqualifying conditions (FC DC), and conclude that FC DC 19(a) ("inability or unwillingness to satisfy debts") and FC DC 19(c) ("a history of not meeting financial obligations") apply. Applicant admitted to owing more than \$15,400 in delinquent taxes to the state of California. These taxes were due to be paid for tax years 1986 to 1991, 16 to 21 years ago. Applicant expressed her then-present inability to satisfy those delinquent debts as of January 2007, and provided no evidence she became able to pay them. She borrowed an additional \$29,000 to buy "recreational merchandise" in April 2007, rather than demonstrate any effort to resolve the debts that she was on full notice were creating security concerns. This shows an unwillingness to satisfy any of the four alleged debts. Her installment and revolving credit accounts are all current, but she admitted a twenty-year history of not meeting her financial obligations to the state of California. There is no evidence that any other FC DC applies.

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<sup>23</sup>ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

<sup>24</sup>Directive, Enclosure 2, at ¶ 18.

I have considered all the Financial Considerations Mitigating Conditions (FC MC) that might apply to Applicant's history of not meeting financial obligations, and inability to satisfy debts. 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") does not apply. Applicant has not incurred additional delinquent tax debt for 15 years, but she has continued to owe these taxes throughout that period, and still does. Her consistent failure to demonstrate any effort to resolve these debts, and choice to incur additional debt for non-essential recreational merchandise, does cast doubt on her current trustworthiness and good judgment. Nor was the behavior infrequent. It involved six consecutive tax years, during which she also had federal tax issues resulting in a 1993 \$7,515 lien.

Applicant did not directly assert that financial security concerns should be mitigated under 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"). While she said the tax problems arose from following bad advice from her first husband, it is evident that she intentionally did not pay those taxes and has failed to do so ever since learning that she owed them. Accordingly, this record does not support application of FC MC 20(b).

Applicant initially asserted, but made no attempt to document, that 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") applies. There is no evidence that the contemplated offer in compromise ever became more than a good intention. FC MC 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") does not apply for the same reason.

Finally, FC MC 20(e) ("the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue") does not apply. Applicant did not dispute the validity of any of the SOR-listed debts. FC MC 20(f) relates to unexplained affluence, and has no application here.

### **Whole Person Analysis**

Applicant's present inability or unwillingness, and 20-year history of failure to satisfy her state tax obligations for the period 1986 to 1991 reflect an extensive and serious disregard of her obligations to government. While she blames bad advice she ignorantly followed for the initial problems, the six-year period involved and the twenty years since, vitiate any mitigating effect of originally not realizing she owed more tax. The conduct was frequent, and the resulting debt is ongoing. Although she was in her early twenties when the tax debts arose, she is now fully mature and otherwise apparently financially stable. The likelihood of continuance is evident from the absence of any indication the debts are being addressed, and the choice to incur additional non-essential debt rather than address those already owed. The fact that taxes are involved makes these debts a greater security concern than ordinary consumer debts, because they more directly reflect an unwillingness to abide by government rules and regulations. Applicant provided no other evidence concerning her trustworthiness, good judgment or reliability, and demonstrated no rehabilitative efforts. For the reasons stated, I conclude Applicant has not demonstrated that it is clearly consistent with the interests of national security to grant her access to classified information.

## **FORMAL FINDINGS**

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Paragraph 2, Guideline E:	Withdrawn by Department Counsel
Subparagraph 2.a:	Withdrawn by Department Counsel

## **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 Applicant. Clearance is denied.

David M. White  
Administrative Judge