

KEYWORD: Financial; Criminal Conduct; Personal Conduct

DIGEST: Applicant incurred approximately \$13,000 in delinquent debt, including unpaid federal taxes from 1993 and 1994. Despite his recent payments, he has failed to mitigate the security concerns raised under the financial considerations guideline. Applicant's failure to file his federal tax returns for two years is a disqualification under criminal conduct. Applicant's incorrect answer on his security application was not an intentional falsification. Applicant has mitigated the personal conduct concern. Applicant's eligibility for a security clearance is denied due to failure to mitigate the criminal conduct and financial considerations concerns. Clearance is denied.

CASENO: 06-23384.h1

DATE: 07/11/2007

DATE: July 11, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 06-23384
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$13,000 in delinquent debt, including unpaid federal taxes from 1993 and 1994. Despite his recent payments, he has failed to mitigate the security concerns

raised under the financial considerations guideline. Applicant's failure to file his federal tax returns for two years is a disqualification under criminal conduct. Applicant's incorrect answer on his security application was not an intentional falsification. Applicant has mitigated the personal conduct concern. Applicant's eligibility for a security clearance is denied due to failure to mitigate the criminal conduct and financial considerations concerns. Clearance is denied.

STATEMENT OF THE CASE

On March 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.¹ The SOR, alleges security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct) 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. The revised guidelines were provided to Applicant when the SOR was issued. The SOR detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant submitted an undated, notarized response to the SOR allegations, and elected to have his case decided at a hearing. On May 29, 2007, the case was assigned to me. A Notice of Hearing was issued on June 4, 2007.² At the June 13, 2007 hearing, the Government introduced Government Exhibits (GX) 1 through 5 into evidence without objections. Applicant testified and introduced Applicant Exhibits (AX) A through H into evidence without objections from Department Counsel. DOHA received the transcript on June 26, 2007. At Applicant's request, I held the record open until June 20, 2007. Applicant timely filed a document. This submission was marked and entered into the record as AX I. Department Counsel had no objection.

FINDINGS OF FACT

Applicant denied all allegations in his SOR response under Guideline F, Guideline J and Guideline E.³ After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact:

Applicant is a 44-year-old employee of a defense contractor. After graduation from high school, he served in the military from 1985 until his honorable discharge in 1989. In 1986, while in the military, he received a two-year degree from a Military Community College. He has worked for his current employer since July 2005. Applicant is divorced three times with two grown children.⁴ He is currently married with two stepchildren. On April 26, 2006, he completed his security clearance (SF 86) application.⁵

When Applicant was divorced in January 1987 from his second wife, the mother of his two children, he paid child support. An agreement was made that his ex-wife would claim their son on

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²Applicant waived his right to 15 days notice.

³(Applicant's Answer to SOR, dated May 3, 2007).

⁴GX 1 (Application for Security Clearance (SF 86), dated April 26, 2006).

⁵*Id.*

her federal and state tax filings and Applicant would claim their daughter on his state and federal income tax returns, as long as he was not in arrears on his child support obligation.⁶

At some point, Applicant's ex-wife claimed both children on her federal income tax return. Applicant was not aware that she had filed the exemption. The Internal Revenue Service (IRS) contacted Applicant for his tax return for 1993 and 1994. They wanted to know why both had claimed the children. Applicant called the IRS and learned that since his daughter had resided with her mother for the majority of the year, she was allowed to claim the daughter as an exemption despite the agreement incorporated in the divorce decree.⁷

Applicant did not file his federal income taxes for the next two years based on some advice he maintained an attorney provided him. He did not have a name for the attorney and revealed after questioning that he found someone in the yellow pages and called on the phone but did not retain the attorney.⁸ Applicant maintained that the attorney advised him not to file his income tax returns until he could resolve the matter concerning the exemption.⁹ Applicant never followed up with a visit to the attorney. However, he maintains, that he was told it was not a federal crime to not file the tax returns. Applicant explained that the attorney told him as long as he paid taxes, there would be no problem. The reasoning was that until the matter was resolved, he did not actually owe the taxes.

As a result of not filing taxes for two years, Applicant owed the IRS. A tax lien in the amount of \$7,844 was filed against him in June 1997. The IRS released the lien in January 5, 2007.¹⁰ A new lien was filed in March 2004 in the amount of \$5,185. Applicant filed his taxes for 1993 and 1994 in 2002 or 2003.¹¹

Applicant owes the IRS approximately \$3,115.77 on the 2004 tax lien. He received a refund in 2006 and that was applied against the balance. He now has a payment plan in place. He pays \$100 a month to the IRS which he started sometime in 2006.¹²

In January 2007, Applicant purchased two vehicles. He has two car loans for a total of approximately \$45,000. His monthly payments are about \$1,000.¹³

Applicant's debt to a collection company for a cell phone in the amount of \$506 is still reported on his latest credit report. Applicant disputes this account. He contested it with two credit

⁶AX H (Divorce Agreement, dated January 1987).

⁷Tr. 35.

⁸Tr. 56-57.

⁹Tr. 36.

¹⁰GX 4 (Certificate of Release of Federal Tax Lien, Internal Revenue Service, January 5, 2007).

¹¹Tr. 41.

¹²GX 5 (Monthly Statement, Internal Revenue Service, dated April 11, 2007).

¹³Tr. 50.

reporting bureaus.¹⁴ After they researched the account, the debt was reported as confirmed to Applicant. He has not followed up on the account to correct the situation.

Applicant does not deny that he was indebted to the Internal Revenue Service (IRS) for tax years 1993 and 1994, and moreover, did not file his tax returns. However, he claims he has been paying \$100 per month since 2005, and that his 2006 federal tax refunds were applied to the debt. He asserts the amount owed is approximately \$3,100. Applicant submitted a monthly statement dated, April 11, 2007 from the IRS indicating that his last monthly payment of \$100 was received.

When Applicant completed his security clearance application on April 24, 2006, he responded “no” to **Section 27. c Your Financial Record**: In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts? However, he responded “yes” and checked the box to **Section 27. d**. In the last 7 years, have you had any judgments against you that have not been paid. He provided detailed information regarding a tax lien for 1992. However, he asserts there was no tax lien for 1992 but rather 1997. This was an error on his part. He did not record his March 2004 tax lien because he did not know about it at the time. He actually filled out a first security application in April 2005 when he was a temporary with the employer. He was asked to re-file in 2006. When he did so, he just updated addresses.¹⁵

Applicant’s current supervisor and facility security office wrote that Applicant is trustworthy and dependable. He is willing to work on anything and is very helpful.¹⁶ He is a hard working technician and employee. In addition, his position requires diligence, attention to detail and exemplary security protocol as to all things pertaining to the national defense. Applicant served admirably in his capacity.¹⁷ They both recommend Applicant highly. His latest performance reviews are fully satisfactory.¹⁸

POLICIES

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.”¹⁹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

¹⁴Tr. 52.

¹⁵Tr. 55.

¹⁶AX C (Recommendation Letter from Facility Security Officer).

¹⁷AX D (Recommendation Letter from Supervisor).

¹⁸AX E and F (Performance Review for 2006 and 2007).

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security 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 ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”²⁰ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.²¹ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.²²

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²³ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²⁴ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁵ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²⁶

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determinations as to Applicant’s allegiance, loyalty, or patriotism.

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.

²⁰ Directive, ¶ E2.2.1.

²¹ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

²² *Id.*

²³ Directive, ¶ E3.1.14.

²⁴ Directive, ¶ E3.1.15.

²⁵ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁶ Directive, ¶ E2.2.2.

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.²⁷

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*), FC DC 19(c) (*a history of not meeting financial obligations*), 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 in this case. Applicant did not file his federal tax returns for 1993 and 1994. He did not pay his federal taxes, resulting in liens of \$7,844 and \$5,158. He has a delinquent account in the amount of \$506.

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. I considered the Financial Considerations Mitigating Condition (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 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*), 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 under control*), FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and 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*).

Applicant is now paying \$100 a month on his unsatisfied tax lien. The lien from June 1997 was released on January 5, 2007. He still has an outstanding account from many years ago that has not been resolved. Applicant blamed his not filing due to advice he received from an attorney. I do not give that any weight and do not find that credible. His recent payments to the IRS do not mitigate his earlier financial irresponsibility. There is no evidence that he acted responsibly under the circumstances.

The issue 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 determination. Applicant has not mitigated the government's concerns under Guideline F.

Guideline J: Criminal Conduct

²⁷AG ¶ 18.

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant did not file his federal tax returns for 1993 and 1994. Criminal Conduct Disqualifying Condition (CC DC) AG ¶ 31(a) (a *single serious crime or multiple lesser offenses*) applies. Applicant acknowledged that he did not file his federal returns. However, I do not find him credible in his assertion that he was told not to do so from a phone call with an attorney. He had been advised from the IRS that his wife could claim his daughter as an exemption since she resided with her the majority of the year. He wilfully failed to file his federal income tax returns, in violation of 26 U.S.C. §7203.

I do not find that any of the mitigating conditions apply.

Guideline E: Personal Conduct

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.

Applicant answered Question 27 (d) and provided detailed information about a tax lien. He checked this box for owing on a judgment instead of a tax lien. I find him credible in that this was an error on his part. I do not find that he intentionally falsified his security application in April 2006. Thus, 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 benefit or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) does not apply.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. 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 their 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.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. An applicant with a good or even exemplary work history may engage in conduct that has negative implications or presents doubt about his judgment. Despite steady employment, Applicant has accrued delinquent accounts and failed to pay his federal income tax for

two years in 1993 and 1994. It is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2. Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3. Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge