

DATE: July 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 02-10280

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Braden M. Murphy, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's willful failure to file his federal income tax returns for 12 straight years--and the ensuing financial troubles caused by IRS assessment of taxes, penalties, and interest--renders him an unsuitable candidate for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 11 August 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of financial considerations and personal conduct. [\(1\)](#) Applicant answered the SOR in September 2003 and requested a decision without hearing. He responded to the Government's File of Relevant Material (FORM), issued 25 May 2004. The record closed 7 July 2004, the day Department Counsel indicated no objection to the response, and the case was assigned to me 9 July 2004.

**FINDINGS OF FACT**

Applicant admitted willfully failing to file his federal income taxes and admitted being in debt to the federal government, although he denied the amount alleged in the SOR. Accordingly, I incorporate his admissions as findings of fact.

Applicant--a 48-year-old electronics technician for a defense contractor--seeks access to classified information. He previously had a clearance while serving in the U.S. Navy, from which he retired in 1997 as an Electronics Technician First Class (paygrade E-6).

Applicant willfully failed to file his federal income taxes from 1985 to 1996. [\(2\)](#) To some extent, he inherited the problem with his new wife, because in July 1985 he married a divorced mother-of-four who herself had not filed her federal income tax returns for several years after her divorce. She has tried to take responsibility for Applicant's failure to file, as she was responsible for the family finances while he was in the Navy. Yet, Applicant acknowledges that he

knew he had to file federal income taxes and that he was not filing them. He also acknowledges that not once during the 12 years he failed to file his federal income taxes did he advise his command that he was delinquent in his federal taxes or seek financial or tax counseling through the Navy or outside community sources. Both Applicant and his wife offer the same explanation for failing to file their federal income tax returns: they did not know how to handle the exemption status of her children and were afraid of the repercussions from the IRS for their failure to file. So, they did nothing.

In March 1996, the IRS filed a tax lien of over \$9,700.00 for tax years 1988-1992. (3) Applicant claims to have paid about \$7,000.00 in back taxes before leaving the Navy in July 1997. However, even this experience with the IRS did not improve Applicant's diligence in filing his federal income taxes. He did not file his 1996 income taxes, even late, and in June 1998 the IRS filed a second lien for the remaining unpaid balances on tax years 1990-1992 as well as balances for tax years 1994-1996. (4) I infer from the second lien that Applicant satisfied the liens for tax years 1988-1989. I also infer that the second lien is not cumulative; that is, that Applicant's total indebtedness to the IRS--at least as of the second lien--is only the \$12,664.00 alleged in 1.b. for tax years 1988-1996.

Applicant has been making payments as reflected in the second lien notice showing no liability for tax years 1988-1989 and reduced liability for tax years 1990. However, what is not clear is whether he has actually been making payments as claimed or whether the IRS is applying amounts withheld from later years to earlier tax years. His tax liability for 1991 increased, reflecting an additional penalty. His tax liability for 1992 remained unchanged.

Applicant claims to have retained an attorney, who ultimately provided no results, and to have submitted two offers in compromise, but the record lacks documentation. One document he submitted shows that did not contact the IRS for over a year between 2002 and 2003. (5)

Applicant cites his patriotism and his 20-year Navy career--neither of which are in dispute--as support for granting his clearance.

## **POLICIES**

The Directive, Enclosure 2 sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each adjudicative decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, I conclude the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct) and Guideline F (Financial Considerations).

## **BURDENS**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove--by something less than a preponderance of the evidence--controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate or mitigate the Government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. (6)

## **CONCLUSIONS**

The Government established its case under Guideline E and Applicant did not mitigate the security concerns. Although not alleged separately as criminal conduct, Applicant's wilful failure to file his federal income taxes for 12 straight years is a misdemeanor violation of federal law. Further, the failure to file caused substantial indebtedness that is not yet resolved. So for 12 years Applicant engaged in deliberate criminal conduct with concomitant fiscal problems that increased his potential vulnerability every year. Applicant's failure to advise his command of this issue or otherwise resolve the issue through other avenues demonstrates to me that Applicant understood at some level just how vulnerable he was.

Applicant's conduct since 1985 regarding his taxes demonstrates poor judgment. He was derelict both in his duty as a citizen and as a senior petty officer in the Navy. I conclude Guideline E against Applicant.

The Government established its case under Guideline F and Applicant did not mitigate the security concerns. Applicant deliberately failed to file his federal income taxes for 12 straight years, knowing that each year he did so he was increasing his financial exposure to the government. He sought no help from his command, other Navy services, or available community services. <sup>(7)</sup> Applicant waited until the IRS came pounding on his door in 1996, and even then could not get his act together well enough to resolve this--at least to the point of a payment schedule or a compromise of his indebtedness--more than eight years later. There is simply no reason to believe, on the record before me, that Applicant will ever have this issue resolved. I conclude Guideline F against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Paragraph 2. Guideline E: AGAINST the Applicant

Subparagraph a: Against the Applicant

### **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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. The SOR alleges a failure to file from "1998 to 1996," which I conclude is a typographical intended to encompass the years 1988 to 1996. However, the 1988 date is based on the IRS liens alleging tax year 1988 as the earliest year covered by the lien. Applicant's October 2001 sworn statement admitted he had failed to file for tax years 1985-1996 inclusive.
3. The record does not indicate why there was no lien for tax years 1985-1987. It may mean only that the aggregate withholding for tax years 1985-1992 was sufficient to satisfy his tax liability for 1985-1987.
4. The record does not reflect why there was no lien for tax year 1993, but again, Applicant acknowledged failing to file for 12 straight years.
5. Applicant's wife attributed the delay to her focus on caring for her seriously ill mother and misplacing the tax records

during this stressful time. Still, acknowledging the stress of dealing with an ill parent, the record does not reflect much diligence by Applicant in dealing with his tax liens with the IRS.

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

7. Applicant's statement acknowledges that he was aware of such programs. I take official notice that the Department of Defense promulgates, and mandates the military departments to promulgate, information on financial responsibility and payment of taxes. Further, the military departments provide free income tax assistance through the VITA (Volunteer Income Tax Assistance) Program, generally administered through the services legal assistance programs. Income tax issues are an authorized area of practice for legal assistance attorneys. In addition, service community assistance organizations maintain their own non-lawyer financial and tax assistance programs as well as maintaining a list of community assets available.