

DATE: August 14, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06295

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Delinquent liability for Federal income taxes of a 42-year-old Applicant, employed by a defense contractor as a test engineer, has been mitigated. She paid off her remaining tax liability, including penalty and interest, on her individual return for tax year 1998. Applicant tried to resolve her liability for joint Federal income tax returns filed with her ex-husband for tax years 1995, 1996, and 1997, by filing requests for innocent spouse relief. Even though they were denied by IRS, the additional tax liability for those years is attributable to her ex-husband, who suffers from a bipolar disorder. However, the remaining tax liability has been resolved, because the Internal Revenue Service accepted her ex-husband's offer in compromise and he made the required payment. Clearance is granted.

STATEMENT OF THE CASE

On October 15, 2002, the Defense Office of Hearings and Appeals (DOHA), 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 and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge. On November 18, 2002, DOHA received Applicant's response to the SOR, in which she requested a hearing. This case was assigned to the undersigned Administrative Judge on January 9, 2003. A notice of hearing was issued on January 14, 2003, and the hearing was held on February 6, 2003. During the hearing, five Government (Govt) exhibits, 17 Applicant (Ap) exhibits, and the testimony of four Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on February 14, 2003.

PROCEDURAL ISSUE

Based on the rule of completeness, Government Counsel objected to the admission of the portion of the Defense Security Service (DSS) report of investigation (ROI) that DSS provided to Applicant (Ap Ex K), as well as to the

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additional material from the ROI that Government Counsel provided to her (Ap Ex L). Over the Government's objections, I admitted those exhibits. However, I have not relied on them in reaching my decision in this case.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 42-year-old test engineer employed by a defense contractor and is seeking a security clearance.

Having previously filed for an extension to file their joint Federal Income Tax return for tax year 1995, Applicant and her husband filed their return in July 1996. Her salary for the tax year amounted to \$36,178 of the \$101,818 reported on their return and her husband claimed business expenses of \$20,574.⁽²⁾ Based on computation of the alternative minimum tax, the Internal Revenue Service (IRS) determined that they owed additional taxes. As of June 4, 2002, they still owed \$5,725.89.00 for tax year 1995, including penalties and interest.⁽³⁾

Although filing for a six month extension to file their joint Federal Income Tax return for tax year 1996, Applicant and her husband failed to file their return until August 1999. Her salary for the tax year amounted to \$39,671 of the \$99,181 reported on their return.⁽⁴⁾ Applicant's husband failed to ensure adequate income tax withholding from a buy-out that he received from the Federal Government.⁽⁵⁾ As of June 4, 2002, they still owed \$40,552.81 for tax year 1996, including penalties and interest.⁽⁶⁾

Although filing for a four month extension to file their joint Federal Income Tax return for tax year 1997, Applicant and her husband failed to file their return until July 1999. Her salary for the tax year amounted to \$43,234 of the \$102,350 reported on their return.⁽⁷⁾ Applicant's husband failed to ensure adequate income tax withholding from the two jobs that he held during the tax year.⁽⁸⁾ As of June 4, 2002, they still owed \$12,595.66 for tax year 1996, including penalties and interest.⁽⁹⁾

Applicant's husband suffered from a bipolar disorder.⁽¹⁰⁾ Without her knowledge, he overspent their income on expensive, unnecessary items.⁽¹¹⁾ He also became abusive to Applicant.⁽¹²⁾

Applicant and her husband separated on January 31, 1998.⁽¹³⁾ Their property settlement agreement required that their townhouse be sold and the proceeds equally divided, unless her husband refinanced the property so as to pay her share.⁽¹⁴⁾ However, he lost his job, became in arrears with mortgage payments, and their mortgage company foreclosed on the property.⁽¹⁵⁾ He also filed for bankruptcy.⁽¹⁶⁾

Applicant and her husband were divorced on September 16, 1999. The court awarded her custody of their two children and he was ordered to pay \$1,380 per month for child support, which he has never paid.⁽¹⁷⁾ Due to his disability, Applicant receives \$381 per month for her children from Social Security, which she deposits in their college savings account.⁽¹⁸⁾

Applicant filed her Federal Income Tax return for tax year 1998 on April 15, 1999. The IRS determined that she still owed additional taxes. As of June 4, 2002, Applicant still owed \$1,308.59 for tax year 1998, including a penalty and interest.⁽¹⁹⁾ The additional taxes resulted from funds she received from her retirement account when she left her previous employer. In July 2002, Applicant obtained a loan from her current retirement account and paid off the outstanding balance owed for tax year 1998.⁽²⁰⁾

In June 2000, Applicant submitted a Request for Innocent Spouse Relief to IRS for each of the following tax years: 1995; 1996; and 1997. For tax years 1996 and 1997, she requested that her tax liability be determined based on her income.⁽²¹⁾ In May 2001, IRS denied Applicant's request for tax year 1995 and included the following explanation:

"Since you had knowledge of the items on the joint tax return, you had knowledge of the items that lead to the

deficiency assessment. This is true even if you did not understand the tax laws regarding alternative minimum tax." [\(22\)](#)

In May 2001, IRS also denied her request for tax years 1996 and 1997. [\(23\)](#)

On September 25, 2002, IRS notified Applicant's former husband of the acceptance of his offer in compromise for tax liability, including penalties and interest, for tax years 1995, 1996, and 1997. [\(24\)](#) IRS stated that its lien against their townhouse "will be released when the offer amount is paid in full." [\(25\)](#) IRS released tax lien on October 29, 2002. [\(26\)](#)

POLICIES

The burden of producing evidence initially falls on the Government to present evidence, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Directive E3.1.14. Once the Government meets its burden, the burden then shifts to the applicant to present evidence to refute or mitigate the Government's evidence and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include 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.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F - Financial Considerations: the concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying include:

A history of not meeting financial obligations (Disqualifying Condition 1);

Inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include:

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) (Mitigating Condition 3);

The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

CONCLUSIONS

The evidence of record shows establishes that Applicant failed to fully pay Federal income taxes for tax years 1995, 1996, 1997, and 1998 (Disqualifying Conditions 1 and 3).

However, the record further establishes that Applicant has paid off the additional tax liability for tax year 1998, the only year in question for which she filed an individual return. Therefore, she has mitigated the allegation found in SOR ¶ 1.d, in accordance with Mitigating Condition 6.

With regard to the additional allegations, pertaining to tax years for which she filed joint returns with her ex-husband (SOR ¶ 1.a-SOR ¶ 1.c), there is evidence of record that the liability resulted from conditions that were largely beyond Applicant's control (Mitigating Condition 3). It appears that her ex-husband's bipolar disorder contributed to his mismanagement of their financial affairs, including the taxes. Although Applicant admitted she assisted with the preparation of their tax returns, her ex-husband provided the figures for the return.⁽²⁷⁾ In addition, he had by far the greater portion of their income for tax year 1995 and he claimed business expenses of more than \$20,500.

Mitigating Condition 3 also applies to tax year 1996, for which Applicant and her husband incurred substantial additional tax liability, as a result of his failure to ensure adequate withholding from his buy-out from the Government. They also incurred additional tax liability for tax year 1997, when Applicant's husband failed to ensure adequate withholding for the two jobs that he held.

Moreover, Applicant has demonstrated good-faith efforts to resolve the tax indebtedness for tax years 1995, 1996, and 1997 (Mitigating Condition 6). Though unsuccessful, she submitted requests for innocent spouse relief to IRS. Although IRS denied her requests, Applicant presented logical reasons for relief. She was also very frank and forthright with IRS, as she was in the hearing in this case.

Finally, the tax liability for tax years 1995, 1996, and 1997 has been resolved as a result of her ex-husband's offer in compromise that was accepted by IRS. Although Government Counsel suggested in final argument that this might not extinguish Applicant's liability for the debt, the Government offered no evidence to support its contention.⁽²⁸⁾ Based on the exhibits submitted by the Government, IRS treats the liability as a single account and its records reflect no limitation on the applicability of the compromise to a single tax payer. Moreover, the Government had more than adequate time to rebut, since Applicant attached a copy of the IRS acceptance of the offer in compromise, as well as a copy of the offer, to her response to the SOR.

As for the Government's suggestion that Applicant's ex-husband may not have followed through with the required payment, evidence of record reveals this is not the case. The IRS acceptance states that its tax lien would not be released until the offer amount was paid in full. Evidence of record demonstrates that IRS released the lien the following month, thereby establishing that Applicant's ex-husband made the required payment.

Since Applicant has presented evidence that the liability for tax years 1995, 1996, and 1997 have been resolved and the Government has not rebutted it, I find accordingly.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all the evidence in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth
Administrative Judge

1. Tr 40-54.
2. Ap Ex A.
3. Govt Ex 2.
4. Ap Ex C.
5. Ap Ex H at 3.
6. Govt Ex 3.
7. Ap Ex D.
8. Ap Ex H at 4.
9. Govt Ex 4. Whereas SOR ¶ 1.a and SOR ¶ 1.b include the liability identified by IRS in Govt Ex 2 and Govt Ex 3, respectively, SOR ¶ 1.c does not accurately reflect the liability identified by IRS in Govt Ex 4.
10. Tr 66; Ap Ex J at 6-7.
11. Ap Ex M at 2.
12. Tr 66.
13. Ap Ex Q.
14. Ap Ex Q.
15. Ap Ex M at 2.
16. *Id.*
17. Ap Ex Q; Tr 72.
18. Tr 71; Ap Ex M at 2.
19. Govt Ex 5.
20. Ap Ex E at 6; Ap Ex N at 4.
21. Ap Ex H.
22. Ap Ex G.
23. Ap Ex H.
24. Ap Ex I.
25. *Id.*
26. Ap Ex B.

27. Tr 68.

28. Tr 100.