

DATE: October 2, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-12147

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's failure to offer any evidence that she filed her past-due tax returns precludes a finding that it is now clearly consistent with the national interest to grant her access to classified information. Clearance is denied.

STATEMENT OF THE CASE

On January 25, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on February 22, 2002, and elected to have her case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about May 20, 2002. Applicant did not file a response to the FORM. The case was assigned to me on June 28, 2002.

FINDINGS OF FACT

Applicant is forty-eight years of age.

Applicant failed to file Federal income tax returns for tax years 1997, 1998 and 1999 in violation of 26 U.S.C. 7203. She also failed to file state income tax returns for tax years 1997, 1998 and 1999 in violation of state law. In her response to the SOR, applicant stated the following about the tax returns in question:

We did not file our Federal or State tax returns for 1997, 1998 or 1999 as we did not believe we had taxes due. We now understand that we must file whether or not taxes are due. We retained a tax advisor in January and are preparing to file our Federal and (State) returns for 1997, 1998 and 1999 concurrently with our 2001 returns.

Applicant filed a Chapter 7 bankruptcy petition in 1993. In February 1994, unsecured debts, totaling approximately \$89,000.00, were discharged by the bankruptcy court. Applicant states that she filed the Chapter 7 bankruptcy petition approximately two years after she and her husband were laid off from their jobs. On the advice of her bankruptcy attorney, she also filed a Chapter 13 bankruptcy petition for the purpose of reorganizing those debts that were not dischargeable by the bankruptcy court (e.g., mortgage debt). After she determined that she would not be able to make the payments proposed by the bankruptcy trustee, she requested that the Chapter 13 petition be dismissed, and it was in May 1994. Shortly thereafter her house went into foreclosure.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into Disqualifying Factors and Mitigating Factors) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Disqualifying Factors and Mitigating Factors are applicable:

Financial Considerations

Disqualifying Factors

1. E2.A6.1.2.1: A history of not meeting financial obligations.
2. E2.A6.1.2.3: Inability or unwillingness to satisfy debts.

Mitigating Factors

1. E2.A6.1.3.1: The behavior was not recent.
2. E2.A6.1.3.3: The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment).

Criminal Conduct

Disqualifying Factors

1. E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

Mitigating Factors

None.

CONCLUSIONS

In this case, the evidence establishes that applicant failed to file her Federal and state income tax returns for tax years 1997, 1998 and 1999 as required by Federal and state law. The evidence further establishes that in 1993 she filed a Chapter 7 bankruptcy petition, and that as a result, approximately \$89,000.00 in unsecured debt was discharged by the bankruptcy court. These facts reflect adversely on applicant's judgment, reliability and trustworthiness.

In her response to the SOR, applicant indicated that she was preparing to file her delinquent tax returns when she filed her 2001 tax returns. She has not, however, offered any evidence indicating that she followed through with her stated intention and filed the delinquent returns. Without such evidence, there is no basis upon which to conclude she has reformed and can be relied upon to file future tax returns within the time required by law. Accordingly, Guideline J is found against applicant.

With respect to Guideline F, applicant's financial difficulties are not recent, and they were caused, in part, by factors beyond her control. Had she offered credible evidence demonstrating financial responsibility over the past several years,

she may have successfully rebutted the Government's *prima facie* case under Guideline F. Absent such evidence, there is no basis upon which to conclude she has reformed and can now be relied upon to handle her financial affairs in a responsible manner.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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.

Joseph Testan

Administrative Judge