

DATE: August 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22001

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 69-year-old employee of a defense contractor who works as a security guard. He did not file tax returns for six years between 1989 and 1994 while working overseas for a private company. After Applicant returned to the U.S. he failed to file tax returns for five more years between 1996 and 2000. Applicant filed for bankruptcy in February 1995, but it was dismissed by the court in December 1995, for failure to make a required payment. Two tax liens were filed against Applicant by the IRS in 1996. At one time the IRS claimed he owed \$163,000.00. Applicant falsified answers to questions on his SF 86 dated February 2000 by failing to acknowledge the tax liens and his delinquent debts. Clearance is denied.

STATEMENT OF CASE

On September 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement dated October 15, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 22, 2004. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded with additional information on May 12, 2004 and the case was assigned to me on May 20, 2004.

FINDINGS OF FACT

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 69-year-old employee of a defense contractor who works as a security guard. He incurred approximately \$163,000.00 in delinquent debts to the Internal Revenue Service (IRS). At the time the SOR was prepared these debts had been reduced to \$4,000.00 and a payment plan had been placed in effect. Applicant did not file tax returns for six years between 1989 and 1994 while he was working overseas for a private company.

After Applicant returned to the U.S. he failed to file tax returns for five more years between 1996 and 2000. Applicant filed for bankruptcy in February 1995, but it was dismissed by the court in December 1995, for failure to make a required payment. Two tax liens were filed against Applicant by the IRS in 1996.

Applicant paid two small debts in 2001 that were unrelated to the IRS problems (SOR ¶ 1.g and 1.h).

Applicant falsified answers to questions on his security clearance application (SF 86) dated February 2000, by deliberately failing to acknowledge the tax liens (Question 36) and his delinquent debts (Questions 38 and 39).

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Applicant's delinquent debts prompted the allegation in the SOR of violation of Guideline F in that an individual who is financially overextended is at risk of having to engage in illegal acts

to generate funds. (E2.A6.1.1.) Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (E2.A6.1.2.1.) and evidence of

inability or unwillingness to satisfy debts. (E2.A6.1.2.3.) Mitigating Conditions (MC) include the

fact that the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (E2.A6.1.3.6.)

Applicant was exempt from payment of federal taxes while he was working overseas because the amount he was paid was below the threshold amount that required payment of tax. However, he was not exempt from filing tax returns. Upon his return to the U.S. he was obliged to pay taxes but neither paid nor filed returns for five more years. He avers that he was confused by the status of claims by the IRS so did not file. His filing for bankruptcy was based on the erroneous belief that this would resolve his tax problems. He blames this on bad advice. Applicant has since received advice from a private tax counselor with assistance from the Taxpayer Advocate office of the IRS and has resolved his difficulties with IRS (Encl. 1 to Answer).

While his failure to file when working overseas might be understandable, it is not adequately explained and mitigated as to why he failed to file for five years after his return to the U.S. Although he was involved in a protracted dispute with IRS that he appears to have eventually won on the financial aspects of the dispute, this did not relieve him of the obligation to file returns for the years in question.

The remaining IRS debt is not sufficiently large that it cannot be resolved with Applicant's current income and he is doing so under the IRS plan. However, even though the IRS debts have largely been resolved, I conclude that mitigating factors are not applicable because of the failure to file tax returns for so many years.

The allegations under Guideline E concerning lack of candor (E2.A5.1.1.) is based on the fact that he failed to acknowledge his tax lien and delinquent debts on his SF 86. Even though he felt the liens were in error, he did know of them and should have reported them as well as the debts that the IRS believed were delinquent at the time of the filing of the SF 86. No mitigating factors are applicable.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of criminal conduct. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

As the policy prescribes, the burden shifted to the Applicant to show that the mitigating conditions are applicable to him.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2.Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge