KEYWORD: Criminal Conduct; Financial
DIGEST: Applicant's continuing failure to file his income tax returns as required by law requires a denial of his clearance request. Clearance is denied.
CASENO: 02-00839.h1
DATE: 03/31/2005
DATE: March 31, 2005
In Re:
<del></del>
SSN:
Applicant for Security Clearance
ISCR Case No. 02-00839
DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN

# **APPEARANCES**

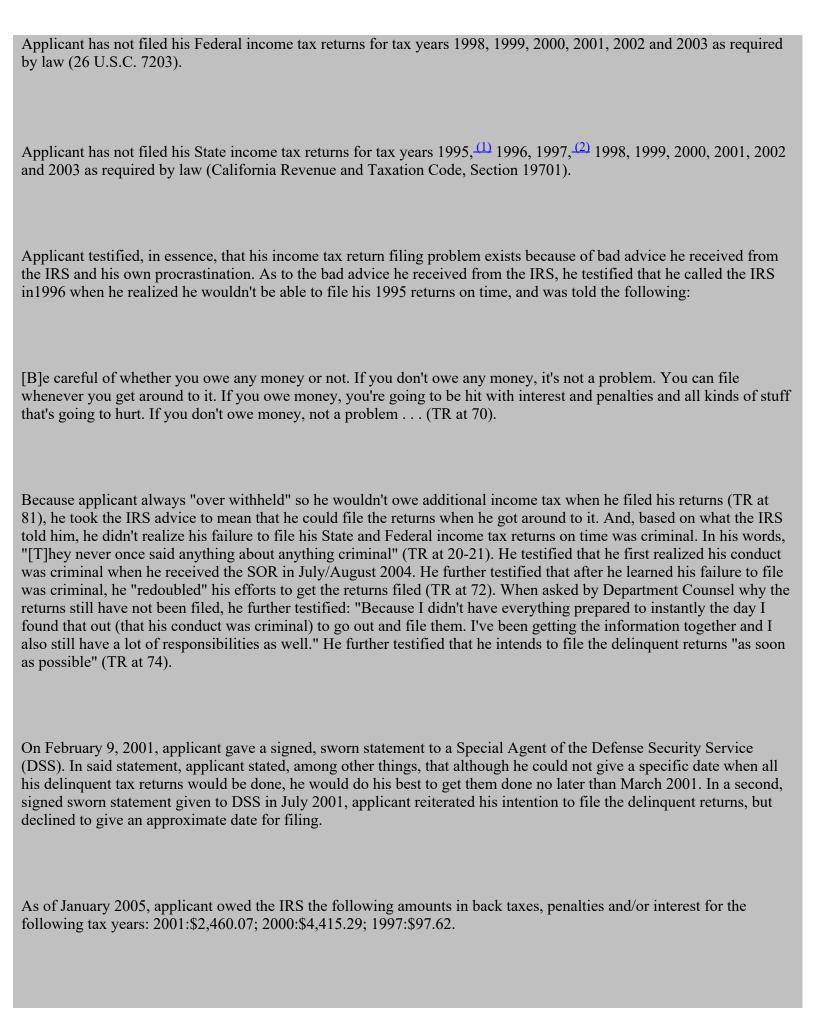
## FOR GOVERNMENT

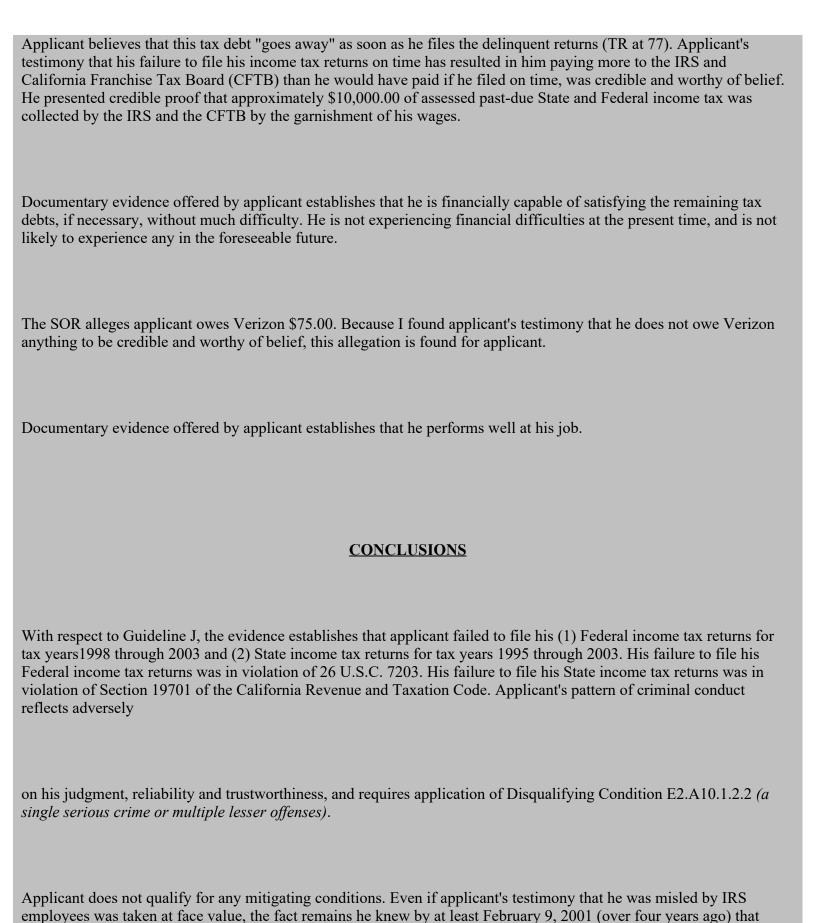
Jennifer I. Campbell, Department Counsel

## **FOR APPLICANT**

Pro Se
<u>SYNOPSIS</u>
Applicant's continuing failure to file his income tax returns as required by law requires a denial of his clearance request. Clearance is denied.
STATEMENT OF THE CASE
On July 27, 2004, 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 August 30, 2004. The case was assigned to the undersigned on December 7, 2004. A Notice of Hearing was issued on January 11, 2005, setting the Hearing for February 10, 2005. Applicant did not appear for the Hearing. He subsequently represented in writing that he became too sick on the morning of February 10 to attend the Hearing, and requested a new Hearing date. An Amended Notice of Hearing was issued on February 24, 2005, and the hearing was held on March 15, 2005. The transcript was received on March 24, 2005.
FINDINGS OF FACT

Applicant is a 46 year old employee of a defense contractor.





DoD was concerned about his income tax filing status, and yet, to date, he has not filed a single delinquent tax return. More importantly, applicant knew by July or August 2004 that (1) his failure to file his Federal and State tax returns on a timely basis was a crime, and (2) DoD was seeking to revoke his security clearance on the basis of this criminal

conduct. Yet, even with this knowledge, he has not filed a single delinquent return. Applicant's inability or

unwillingness to follow the law, even with the knowledge that his failure to do so could cost him his security clearance, is particularly troubling.

Applicant testified that since late 2004, he has had a tax preparer helping him prepare his delinquent tax returns. This is certainly a step in the right direction. However, given applicant's history, this in no way guarantees that applicant's delinquent tax returns will be filed. Based on applicant's continuing failure to follow the law, I have no choice but to conclude that applicant does not currently possess the good judgment and reliability required of security clearance holders. Accordingly, Guideline J is found against applicant.

With respect to Guideline F, applicant's failure to file his income tax returns on time has cost him thousands of extra dollars, and has resulted in his wages being garnished by both the IRS and CFTB. Forcing the IRS and CFTB to garnish his wages in order to collect his tax debts requires application of Disqualifying Conditions E2.A6.1.2.1 (a history of not meeting financial obligations) and E2.A6.1.2.3 (inability or unwillingness to satisfy debts).

The evidence establishes that applicant has satisfied most of his past-due tax debts. With respect to the remaining IRS debt totaling approximately \$6,900.00, I found his testimony that, when he files his delinquent returns this debt "goes away," to be credible and worthy of belief. However, even if he is found to be liable for this debt, he clearly has the financial resources to satisfy it and still meet his day-to-day living expenses. In short, even if this tax debt is factored in, applicant's current financial stability will not be adversely affected. Although applicant has chosen a strange and costly way to pay his income taxes, it is not causing him financial difficulties at the present time, and it is unlikely to cause him financial problems in the foreseeable future. Given these facts, I conclude that applicant is not "at risk of having to engage in illegal acts to generate funds." [3] Based on the foregoing, Guideline F is found for applicant.

#### **FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: FOR 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

- 1. Applicant testified he filed his 1995 State income tax return. Although I believe that applicant truly believes this return was filed, based on Exhibits 6 and 11, I find that it was not filed.
- 2. Applicant testified he believes a tax preparer, to whom he gave all the necessary paperwork in late 2004, filed his 1996 and 1997 State income tax returns. Applicant's belief appears to be based more on hope than on fact since the tax preparer could not find any record of applicant's returns when applicant went to his office on the morning of the Hearing to inquire about them. Based on the evidence as a whole, I find that these two tax returns have not been filed.
- 3. E2.A6.1.1. *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.