

KEYWORD: Financial; Personal Conduct

DIGEST: The Internal Revenue Service (IRS) filed three separate tax liens filed against Applicant for unpaid taxes, interest, and penalties for tax years 1989, 1991, 1993, 1995, 1996, 1997, and 1998. Total amount owed on the three liens was \$14,993.34. He still owes the IRS "about \$10,000.00." Additionally, he falsified his security clearance application in response to questions pertaining to repossessions and past liens. His lack of truthfulness in providing required information on the security clearance application raises questions and doubts about his security eligibility and suitability. Clearance is denied.

CASENO: 02-04122.h1

DATE: 01/11/2005

DATE: January 11, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-04122

**DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Internal Revenue Service (IRS) filed three separate tax liens filed against Applicant for unpaid taxes, interest, and penalties for tax years 1989, 1991, 1993, 1995, 1996, 1997, and 1998. Total amount owed on the three liens was \$14,993.34. He still owes the IRS "about \$10,000.00." Additionally, he falsified his security clearance application in response to questions pertaining to repossessions and past liens. His lack of truthfulness in providing required information on the security clearance application raises questions and doubts about his security eligibility and suitability. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 15, 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-Applicant failed to meet the financial considerations (Guideline F), and personal conduct (Guideline E) personnel security guidelines of the Directive. Applicant answered the SOR in writing on November 3, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on January 7, 2004. On January 22, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance.

The government offered ten documents, which were admitted without objection as Government Exhibits (GE) 1 through 10. The Applicant offered two documents, which were admitted without objection as Applicant Exhibits (AE) A and B. DOHA received the transcript (Tr.) of the proceeding on January 30, 2004.

### **FINDINGS OF FACT**

Applicant is a 63-year-old married man, who has three adult children. Applicant was awarded an associate's degree, and attended approximately a year of college beyond that. He was also awarded a certificate in telecommunications from a local university. Applicant is employed as a senior voice engineer for a defense contractor and seeks a security clearance in order to enhance his employment potential.

The Internal Revenue Service (IRS) filed three separate tax liens against Applicant. The first lien was filed on June 26, 1995, for unpaid taxes, interest, and penalties for tax years 1989, 1991, and 1993 totaling \$4,789.43. GE 3.

The second lien was filed on August 31, 1999, for unpaid taxes, interest, and penalties for tax years 1995, 1996, and 1997 totaling \$5,950.01. GE 4.

The third lien was filed on April 18, 2000, for unpaid taxes, interest, and penalties for tax year 1998 totaling \$3,253.90. GE 5.

In addition to the three federal tax liens, the SOR alleged Applicant owed a credit card company \$612.00 as of March 28, 2003.

Applicant completed his security clearance application on October 15, 2001. Question 35 asked if, in the previous seven years, Applicant had any property repossessed for any reason. Question 36 asked if, in the previous seven years, Applicant had a lien placed against his property for failing to pay taxes or other debts. Applicant answered "no" to both questions. GE 1.

Applicant explained his tax lien problems arose during a time he was in business for himself and all of his income was going towards living and job expenses. He stated, "I never could get far enough ahead that I could pay the taxes, and at that - I think in the middle of - in the mid 90s, the economy took a real big downturn and it made it very difficult for me to even proceed with what I was doing and make a liveable wage. I had a lot of expenses, medical expenses, on my wife's part, and that's the only explanation I've got." Tr. 45.

Applicant denied owing the credit card debt when interviewed by the defense security service on April 23, 2003, and indicated he had no knowledge of the account or debt alleged and suggested the debt may be his son's debt who has the same name as he does. GE 2, p. 3. In his Response to the SOR, he indicated this debt "[w]as an item I was unaware of and has since been resolved to everyone's satisfaction" and that "[m]y account was being sent to an incorrect address

since relocated (sic) back to [new address]."

Applicant's explanation for not listing the tax liens or repossession on his security clearance application is: "I intentionally did not list my tax liens and my vehicle repossession because I didn't feel they were issues of a security concern since I had already taken steps to resolve them." GE 2, p. 3., Tr. 42. In his Response to the SOR regarding the repossession, he indicated, "The reposition (sic) in question when I relocated back to [new address] that was an error in timing of payoff of the vehicle. That item was to be corrected and expunged from my record when the payment was received." In his Response to the SOR regarding the tax liens, he indicated, "The question of the tax liens was due to the fact that while I was correcting these items with the IRS and was with [the IRS], I was told that the letters were only to ensure that I would resolve these problems and I was. I encountered many delays while working these issues because of misplaced records and files and a reassignment or retirement of [IRS point of contact]."

Applicant submitted a letter dated January 22, 2004, from his certified public accountant (CPA) stating that Applicant had submitted an Offer in Compromise with the Internal Revenue Service to resolve all federal taxes owed. His CPA stated Applicant was current on all his federal income tax filings through tax year 2002. AE A. Applicant estimates he owes the IRS "about \$10,000.00." Tr. 26, 27, 47.

Applicant submitted an employee performance appraisal dated January 5, 2004, reflecting above average performance. AE B.

## 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. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure (2) of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of

Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).*

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline F - Financial Considerations**

In the SOR, DOHA alleged the IRS filed three separate tax liens against the Applicant. The liens included unpaid taxes, interest, and penalties for tax years 1989, 1991, 1993, 1995, 1996, 1997, and 1998. The total amount Applicant owed the IRS for these three liens was \$14,993.34. Additionally, DOHA alleged the Applicant owed a credit card company \$612.00. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR, except the one contained in ¶ 1.d. The debt alleged in ¶ 1.d. appears to have been resolved. Applicant has a history of not meeting his financial obligations, ¶ DC E2.A6.1.2.1., and has been unable or unwilling to pay his debts, ¶ DC E2.A6.1.2.3. Some of the conditions that resulted in Applicant not paying his taxes were beyond his control - the economy took a downturn in the mid 1990s when Applicant owned his business and Applicant's wife having uncovered medical expenses. That explanation might carry more weight if Applicant had not had tax liens filed against him for seven, separate years, the last being 1998. Seven years later, Applicant by his own estimate, still

owes the IRS "about \$10,000.00." His CPA, however, reports that Applicant has a "pending" offer to the IRS to resolve all federal taxes owed. There is no evidence that Applicant's offer has been accepted or this debt has otherwise been resolved or under control. ¶ MC E2.A6.1.3.4 does not apply. Applicant's lack of due diligence in staying abreast of his income taxes over a lengthy time does not weigh in his favor. Thus, the number of tax years involved and Applicant's

failure to resolve an original \$14,993.34 tax liability with "about \$10,000.00" still owed does not constitute a good-faith effort to pay the IRS or otherwise resolve this debt. ¶ MC E2.A6.1.3.6. Under these circumstances, Applicant has not mitigated the security concerns raised by his tax liens. I find against Applicant.

## **Guideline E - Personal Conduct**

In the SOR, DOHA alleged Applicant falsified his security clearance application by deliberately failing to disclose his vehicle repossession and past tax liens. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in the SOR. Applicant's falsifying his security clearance application constitutes the deliberate omission, concealment, or falsification of relevant and material facts from his security clearance application, which application is used to determine his security clearance eligibility. ¶ DC E2.A5.1.2.2. Applicant's explanation for not listing either his repossession or tax liens because he did not feel they were security concerns because he had already taken steps to resolve them is an unacceptable explanation. It is not within Applicant's discretion to provide or not provide requested information because he does not believe it to be a security concern. The security clearance application was quite clear in terms of what was requested and Applicant chose to provide false answers. None of the mitigating conditions listed in the guideline apply to Applicant's case. I find against Applicant.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

**DECISION**

In light of all of 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. Clearance is denied.

Robert J. Tuidor

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.