

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant with a history of delinquent federal tax debts, which turned out to be much larger than estimated at hearing, demonstrates no track record for payment on his recently concluded installment agreement with the IRS and fails to overcome security concerns associated with his past tax problems. Applicant does successfully refute lien omission allegations re: his SF-86 by persuading he had no knowledge of the liens. Clearance is granted

CASENO: 02-04921.h1

DATE: 09/18/2002

DATE: September 18, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04921

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Sam C. (Van) Bingamann, Esq.

SYNOPSIS

Applicant with a history of delinquent federal tax debts, some attributable to periods of unemployment and heavy child support following his divorce, ultimately settled on a payment plan that called for monthly payments on a tax debt much larger tax debt than initially estimated and leaves too many doubts about payment success to absorb security risks associated with his incurred delinquencies. For lack of substantiation that he was notified of any pending tax liens against his property before being told by an interviewing DSS agent of state and federal tax liens filed against him, falsification concerns are resolved favorably. Clearance is denied.

STATEMENT OF THE CASE

On March 28, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on April 11, 2002, and requested a hearing. The case was assigned to this Administrative Judge on June 25, 2002, and scheduled for hearing on July 15, 2002. A hearing was convened on July 31, 2002, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) of the proceedings was received on August 7, 2002.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant asked to keep the record open to enable him to supplement the record with a work history and documented settlement arrangements with the IRS. Within the time permitted, Applicant provided a work history; he also asked for more time to permit Applicant's accountant to work out a settlement with the IRS over Applicant's accrued tax debts and associated lien. For demonstrated good cause, over Department Counsel's objection, Applicant was granted an additional seven (7) days in which to finalize a installment agreement with the IRS. Within the time permitted, Applicant faxed the executed installment agreement, dated August 16, 2002. Both submissions are accepted: Applicant's work history as exhibit C, and his installment agreement with the IRS as exhibit D.

STATEMENT OF FACTS

Applicant is a 53-year old quality control tester for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Applicant is alleged to have falsified his security clearance application (SF-86) of August 4, 2000 by omitting tax liens placed against his property for taxes, penalties and interest as follows: (a) a state tax lien in January 1994 for tax year 1992 in the approximate amount of \$1,513.11, which was released in August 1998, a state tax lien in July 1994 for tax year 1993 in the approximate amount of \$402.52, which was released in August 1998, and (c) a federal tax lien in January 1994 for tax year 1992 in the approximate amount of \$5,894.19, which has neither been paid to date nor significantly worked on by Applicant to satisfy the debt.

Additionally, Applicant is alleged to have a history of financial difficulties: Specifically, he is indebted to the Internal Revenue Service (IRS) for taxes covered by a federal tax lien in the amount of \$5,894.19.

For his response to the SOR, Applicant denied each and every allegation of the SOR for the stated reasons that he neither deliberately failed to list his tax liens on his SF-86 nor would seek to use his knowledge or influence to generate funds for profit. In further explanation, Applicant claimed to have been unaware of any tax liens against himself or his property, while admitting to knowledge of a balance due for past taxes.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Between 1990 and 1994, Applicant accrued state taxes, which he failed to pay in a timely way. Contemporaneously and beyond, he accrued federal taxes, which became delinquent: specifically, for the tax periods of 1992 through 1997. For failing to pay his state taxes, tax liens were filed against his property by the State: in January 1994 (for tax year 1992) in the approximate amount of \$1,513.11, and again in July 1994 (this for tax year 1993) in the approximate amount of \$402.52. During this same period, Applicant became delinquent in paying his assessed federal taxes, and as a result, the IRS filed a federal tax lien against his property in January 1994 (for tax year 1992) in the amount of \$5,894.19.

Applicant attributes his tax difficulties with each jurisdiction to repeated periods of unemployment, beginning with a layoff from his longtime employer in 1991. Still at work in dealing with the financial consequences of his 1988 divorce (which included heavy child support payment responsibilities), and laid off by his employer, Applicant's finances had become strained to the breaking point by 1991 (*see* R.T., at 32-33).

Eventually, Applicant was able to work out a payment agreement with the State, which facilitated releases of the State's tax liens in 1998. He had worked out a settlement with the IRS in 1995 for \$3,400.00, payable on an installment basis. After making payments to the IRS over a six to eight month period, he grew frustrated with the lack of any noticeable reflection in his overall tax liability. Having lost his job and facing surgery in 1995, he quit making payments towards his settlement commitments and became content to let the IRS simply use his refunds to apply toward his past tax debts (*see* R.T., at 40).

Between 1995 and July 2002, Applicant continued to accrue tax debts, albeit at an uncertain rate, despite contrary previous claims he kept current with both his state and federal taxes after 1995. Making no appreciable efforts to resolve his tax differences with the IRS until after he received the SOR, Applicant engaged counsel and an accountant to seriously address his federal tax debts. He has been successful in working out an installment agreement with the IRS that provides for monthly payments in the amount of \$200.00 a month, beginning in October 2002. It turns out, however, that his ultimate federal tax liability is much larger than either the amount covered by the federal tax lien or the amount he claimed to be presently in arrears on with the IRS: in the estimated \$6,600.00 range (*see* R.T., at 54-56). The figure Applicant agreed to pay on an installment basis is listed in his installment agreement as \$15,170.00, plus unstated penalties and interest. This vastly larger figure is tied to taxes owed for tax years 1992 through 1997, and presents a debt picture radically different from the one described at hearing. As of the close of the record, no payments had been credited to Applicant on this settled debt amount.

When asked to execute an SF-86 in August 2000, Applicant answered **no** to question 36, which asked whether he had any lien placed against his property within the last 7 years. By answering no, he omitted his three tax liens filed by the state and IRS in 1994. He attributes his omissions not to any deliberate concealment but to ignorance of any such liens against his property. (*see* ex. 1). Applicant assures he moved to his present location in early 1994 and was not notified

of any of the liens until his DSS interview in January 2001. The lien notices corroborate his claims to some extent: They do reflect his old address on the lien notices themselves (*see* exs. 3, 4 and 5; R.T., at 27, 31, 36-39, 60, 68). Applicant's claims are not controverted by anything in the record, are credible, and are accepted.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 3. 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).

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, falsification or misrepresentation of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status,

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating conditions:

DC 1 The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant comes to these proceedings with a lengthy history of security-significant delinquent state and federal tax debts and accompanying liens that trace, in part, to his earlier divorce and ensuing child support payments during periods of unemployment.

Over a six-year period spanning 1992 and 1997, Applicant became delinquent in paying his federal taxes. In 1995 the IRS placed a lien against his property to cover aggregate accrued taxes in the amount of \$5,894.19. For a time, Applicant was able to work down this accumulated debt through a repayment plan arranged with the IRS. When he became frustrated over the absence of any recorded progress, he ceased making payments and was basically content to let the IRS apply any refunds against his old debts.

Applicant's underlying federal tax debt does not reflect the reductions he claimed at hearing, but rather a history of mounting tax debt covering all of the tax years spanning 1992 through 1997. By July 2002, his accumulated taxes owed the IRS exceeded \$15,000.00 in the aggregate. Added to this accumulated tax debt are unspecified penalties and interest. With no seasoning yet to gauge the reliability of his installment payment agreement, it is difficult to appraise the viability of Applicant's current payment program.

At issue in this proceeding is not only Applicant's reliability and trustworthiness in light of his accumulation of delinquent federal tax debts (now in excess of the aggregate sum of \$15,000.00) and ensuing tax lien, but questions about the realistic likelihood of his being able to resolve his federal tax debt within the foreseeable future under the amortized payment schedule he committed to. Security concerns are not abated by his past discharge of his state tax liens and recent settlement agreement worked out with the IRS to pay off his accumulated federal tax debts. Security determinations have never confined risk considerations to the elimination of debts that have either been discharged or are the subject of recent settlement agreements, but rather they have looked to the applicant's overall financial history to shed light on his most recent conduct as an indicator of repeat potential. This the Government has done in underscoring Applicant's still ongoing financial difficulties associated with his unseasoned settlement agreement with the IRS. In other words, judgment/trust concerns are implied from past and still ongoing financial burdens when considering the security significance of delinquent debts.

Here, some judgment lapses must be imputed to Applicant for not being more vigilant about satisfying the earlier installment settlement he reached with the IRS in 1998, and avoiding additional debt delinquencies in the ensuing years. It would appear from the settlement he recently reached with the IRS that he underestimated his overall federal tax liability by a considerable amount. Not only do the current taxes owed strain credibility estimates about the degree of control he has over his finances, but they raise additional doubts about his ability to complete his agreement in a timely way. Appraising the security significance of Applicant's financial deficiencies, several Disqualifying Conditions (DC) of the Adjudicative Guidelines (for financial) apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While most of Applicant's federal tax debt might be extenuated by exigent circumstances (*viz.*, strains from child support and medical procedures, which were compounded by periods of unemployment), none warrant total extenuation and mitigation, given Applicant's emergent repayment capabilities and reluctance to take more aggressive measures with resolving his mounting tax debts between at least 1995 and the present. Without a reliable repayment record to draw upon, he leaves too much to chance and risk. At this time his efforts leave too much to speculation: his debt repayment prospects remain untested and uncertain.

Applicant is to be encouraged in his ongoing efforts to discharge his federal tax debt through negotiated settlement with the IRS. Nothing in the record indicates any work-related trust problems associated with Applicant, and he would appear to have a promising career with his current employer. It is still too soon, however, to make safe predictions about how successful he will be in discharging his accumulated federal tax debt and perforce mitigate the financial problems created by his history of unpaid taxes. Unfavorable conclusions warrant, accordingly, with respect to the allegations covered by sub-paragraph 2.a of Guideline F.

Falsification issues confront Applicant as well as financial ones. By omitting his previously discharged state tax liens and his federal tax lien from his August 2000 SF-86, he is alleged to have falsified his security questionnaire. Applicant assures, however, that he had moved from the listed address in each of the covered tax liens and had no notice of the liens before being told of them in an ensuing DSS interview. He is corroborated by the lien notices themselves. Absent any credible evidence in the record to the contrary, Applicant's assurances of having no prior knowledge of any tax liens being on file against either himself or his property are entitled to acceptance. He may take full advantage, as such, of MC 1 (information not substantiated) of the Adjudication Guidelines for Personal Conduct. Favorable conclusions warrant, accordingly, with respect to sub-paragraph 1.a of Guideline E.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

PERSONAL CONDUCT (FALSIFICATION): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-para. 2.a : AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge