

DATE: August 25, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06926

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

By his continuing inability or refusal to pay his debts and his income taxes and his deliberate omissions from his security clearance application, Applicant failed to demonstrate it is in the national interest to grant or continue his security clearance. 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 6 January 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-Applicant failed to meet the financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J) personnel security guidelines of the Directive. Applicant answered the SOR in writing on 17 January 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 12 June 2003. The SOR was amended without objection on 30 June 2003. On 17 July 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. DOHA received the transcript (Tr.) of the proceeding on 24 July 2003.

FINDINGS OF FACT

Applicant is a 54-year-old high school graduate who is the senior technical manager over the technical teams that work on the service-wide intranet at all installations of one of the armed services.

In the 1980s, Applicant owned three gas stations and leased another in State 2. He did very well financially. In 1987, he decided to sell them and try his hand at another business. Gasoline was found in the ground and in the water table under his stations. This environmental problem caused considerable expense, delay in the sale of the properties, and resulted in financial difficulties for Applicant. Tr. 19-24. From 1991-96, he was self-employed in State 2. Ex. 1 at 4. He had always been fascinated by computers, and toward the end of the 1990s, he moved to State 1 and took courses to gain

certifications that permitted him to enter the computer field. Tr. 25-28.

Applicant completed a security clearance application (SCA) on 3 October 2001. Question 36 asked if, in the last seven years, Applicant had a lien placed against his property for failing to pay taxes or other debts. Question 38 asked if, in the last seven years, Applicant had been over 180 days delinquent on any debts. Applicant answered "no" to both questions. The following chart summarizes each of the financial issues raised in the SOR and their current status.

No.	Nature and Amount	Current Status	Record
1	Credit card sent for collection in 2001-\$3,444	Unpaid	Tr. 37, Answer (Ans)
2	Doctor bill sent for collection in 1998-\$200	Paid after receiving SOR	Ans
3	Hospital-sent for collection in 1998-\$51	Paid after receiving SOR	Ans
4	Hospital-sent for collection in 1999-\$192	Paid after receiving SOR	Ans
5	IRS-1992 taxes-\$4,500	Unpaid	Ans; Tr. 42
6	IRS-1993 taxes-\$10,888	Unpaid	Ans; Tr. 44
7	IRS-1994 taxes-\$10,217	Unpaid	Ans; Tr. 44
8	IRS-1995 taxes-\$1,513	Unpaid	Ans; Tr. 44
9	IRS-1996 taxes-\$3,448	Unpaid	Ans; Tr. 44
10	IRS-1997 taxes-\$1,970	Unpaid	Ans; Tr. 44
11	Fed. tax lien (Dec 1996) \$33,051	Unpaid	Ans; Tr. 46-47
12	Fed business tax lien (1996) \$38,501	Unpaid	Ans; Tr. 47-49
13	IRS employment taxes-\$76,000	Unpaid	Ans
14	State 1, 2000 taxes-\$5,372	Resolved	Tr. 57-58; Ex. G
15	State 2, business taxes-\$4,442	Resolved	Exs. Q, R, S

On 27 November 2001, a special agent of the Defense Security Service (DSS) interviewed Applicant about his financial situation. Ex. 2. Applicant completed a signed, sworn statement on that date in which he admitted debts 2 and 3 (see chart) and said he would pay them immediately. Applicant also completed a financial statement which showed he had a monthly net remainder of \$3,367 after all of his bills were paid. It also listed as delinquent his total debt to the IRS (\$150,000) and his debts to the doctor and hospital noted in the chart as 2 and 3.

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 Applicant had debts to creditors he had not satisfied (¶¶ 1.a.-1.d.), debts he owed the IRS for his personal income taxes (¶¶ 1.e.-1.j), federal tax liens against his property (¶¶ 1.k.-1.l.), employment taxes owed the IRS for several years (¶ 1.m.), unpaid personal state income taxes (¶ 1.n.), and unpaid state business taxes (¶ 1.o.). An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant established that Debts 14 and 15 (see chart) were tax liabilities that should not have been assessed against him. Exs. G, Q, R, S. Finding is for Applicant on SOR ¶¶ 1.n. and 1.o.

Applicant has a history of not meeting his financial obligations. DC 1. He still has not resolved his federal income tax deficiencies for years 1992-97. He was unable or unwilling to satisfy debts. DC 2. Even after Applicant told the DSS agent that he would immediately pay his delinquent medical bills, he did not do so. Despite having a monthly net remainder of \$3,367, he failed to pay the delinquent medical bills, totaling only \$251, until after he received the SOR-some 13 months later. Much of his original financial problems can be traced to conditions that were largely beyond his control (MC 3)-the inability to sell his gas stations without costly environmental cleanup. Yet, even from Applicant's own exhibits, it is clear that he is still unable or unwilling to meet his financial obligations. Applicant still owes the IRS \$3,679 in unpaid taxes, penalties, and interest for the 2002 tax year. Ex. V. Finding is against Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to disclose the tax liens that had been placed against his property (¶ 2.a.) and the debts that, in the past seven years, were over 180 days delinquent (¶ 2.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

It is a disqualifying condition to deliberately omit, conceal, or falsify relevant and material facts from an SCA. DC 1. Applicant asserts he never deliberately failed to disclose any information on his SCA. Tr. 12. He admits knowing there was a tax lien against him, but he claims he thought it was not filed more than seven years before he completed the SCA. Two federal tax liens totaling over \$70,000 were filed against Applicant on 2 December 1996, less than five years before he completed the SCA. Six months before completing his SCA, Applicant filed an offer and compromise with the IRS for tax liabilities that he incurred from 1992-1997. Under all of the circumstances, I am convinced he knew these debts were incurred in the previous seven years and he deliberately omitted them from his SCA. Although the deliberate falsification was an isolated incident, it was recent. Therefore, MC 2 does not apply. None of the other mitigating conditions under this guideline apply to Applicant's case. Finding is against Applicant.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant committed criminal acts by willfully failing to file his federal income tax returns for tax years 1998 and 1999(¶¶ 3.a.-3.b.), falsifying his answers to questions 36 and 38 on his SCA (¶ 3.c.), and failing

to file his state income tax returns for tax years 1997-2000 and 2002 (¶¶ 3.d.-3.h.). A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

Under 26 U.S.C. § 7203, it is a criminal offense (misdemeanor) for any person required to file an income tax return to willfully fail to do so. Ex. 8. Applicant failed to file income tax returns for tax years 1998 and 1999. He claims he was not required to file because he did not earn sufficient income. There is no evidence of record to support a contrary conclusion. Finding is for Applicant on ¶¶ 3.a. and 3.b.

It is a felony to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of the executive. 18 U.S.C. § 1001(a)(2). Applicant denies that his failure to correctly answer questions 36 and 38 on his SCA was knowing and willful. Applicant knowingly and willfully failed to answer these questions correctly. Both questions were relevant and material to the granting of a security clearance. These are serious criminal offenses punishable by up to five years confinement and a \$10,000 fine. *See* DC 2. The falsifying of his SCA was an isolated incident. MC 2. After weighing all the evidence, the mitigating condition is not sufficient to outweigh the disqualifying condition. Finding is against Applicant on ¶ 3.c.

In State 1, it is a felony for any person required to file a tax return to knowingly fail to do so. Ex. 7. The Government introduced evidence from the State Department of Taxation that Applicant failed to file tax returns for tax years 1997, 1998, 1999, 2000, and 2002. Ex. 5. Applicant claims that he did not have sufficient income to require him to file in any of those years, except 2002. He filed his 2002 State tax return, albeit several months late. Ex. H. Under the circumstances, the evidence is insufficient to show that Applicant's conduct was criminal. Finding is for Applicant on ¶¶ 3.d.-3.h.

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.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: For Applicant

Subparagraph 1.o.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: For Applicant

Subparagraph 3.e.: For Applicant

Subparagraph 3.f.: For Applicant

Subparagraph 3.g.: For Applicant

Subparagraph 3.h.: For 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.

James A. Young

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.