

DATE: April 4, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27602

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro se*

**SYNOPSIS**

Applicant's financial difficulties were not mitigated where they were due to his financial irresponsibility in deliberately failing to file his federal tax returns for 1987-1990, in failing to keep current on his repayment plan in 1998, and in failing to pursue resolution of this indebtedness until shortly before the hearing. Applicant's favorable character references were insufficient to overcome adverse security inference of his indebtedness. Clearance denied.

**STATEMENT OF THE CASE**

On 21 November 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 24 December 2002, Applicant answered the SOR and requested a hearing. The case was assigned to me on 4 February, and received by me on 10 February 2003 when I returned from travel. On 26 February 2003 I scheduled the case for hearing and I issued a Notice of Hearing on 4 March 2003 for a hearing on 18 March 2003.

At the hearing, the government presented seven exhibits--admitted without objection--and no witnesses; Applicant presented three exhibits--admitted without objection--and the testimony of four witnesses, including himself. DOHA received the transcript on 27 March 2003.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR; accordingly, I incorporate these admissions as findings of fact.

Applicant--a 60-year-old employee of a defense contractor--seeks access to classified information. He is a truck driver hauling cargo for the Department of Defense; the requirement for him to obtain a clearance to perform this work was imposed in the wake of the September 2001 attacks.

Applicant has a history of financial difficulties manifested by substantial indebtedness to the IRS. He failed to file his federal income tax returns for at least tax years 1987, 1988, 1989, and 1990 for periods varying from three to six years. The IRS began pursuing Applicant for his past due taxes in approximately May 1993 (Tr. 50-54). By the time he filed amended returns<sup>(2)</sup> for the missing years in May 1998 (1987) and September 1998 (1988, 1989, and 1990), his debt for unpaid taxes, interest, and penalties totaled nearly \$61,000.00: \$10,467.82 for 1987 (G.E. 6), \$8,933.19 for 1988 (G.E. 5), \$22,094.23 for 1989 (G.E. 4), and \$19,125.67 for 1990 (G.E. 3). Applicant entered into an installment agreement with the IRS, but fell behind in his payments, and the agreement was terminated in 1998. As of February 2002, Applicant had not paid these tax delinquencies, and was not making payments on the accounts. He also has one collection account for \$109.00 for a creditor he is unable to locate (Tr. 46).

Applicant disclosed his indebtedness to the IRS on his October 2001 clearance application (G.E. 1).<sup>(3)</sup> In his sworn statement on 28 January 2002, he attributed his tax delinquencies to underpayment of his taxes (G. E. 2):

Concerning my financial situation: During an IRS audit they determine that I had underpaid my taxes for a period of about five or six years. I think it was from 1983 to 1989. The IRS originally assessed an indebtedness of about \$250,000.00 which was based on estimated amounts that were much higher than my actual obligation. We negotiated with the IRS and provided all the documentation we could. The final amount was about \$75,000.00. My wife and I established an installment agreement and made payments for several months.<sup>(4)</sup> We were late with our payment and the installment agreement was terminated. I believe this was in 1997 or 1998. Since then we have made no further payments on the account, however, each year my federal tax return is held by the IRS and applied to our balance.<sup>(5)</sup> I have had no contact with the IRS since 1998 and do not know the exact amount of the debt. I intend to file an Offer in Compromise this year to settle the account.<sup>(6)</sup> I listed this debt as a tax lien but I am not certain if the IRS has actually filed a formal tax lien. My wife and I are otherwise current in our federal, state and local taxes.

However, the IRS records and Applicant's testimony demonstrate that his tax problems began when he simply decided to stop filing his federal tax returns, beginning apparently with tax year 1987. The IRS documents reflect that he filed an automatic extension for tax year 1987, but then never filed the required return. He failed to file for tax years 1988, 1989, and 1990 as well. At the time he stopped filing his required federal tax returns, he was self-employed and began to feel overwhelmed by the requirements of running his business. He decided he did not have to file his federal tax returns because he always received a refund. However, he acknowledged that he paid federal taxes in the years before 1987 and after 1990 (Tr. 51-54).

Applicant's character references (A.E. B, C) consider Applicant an honest, reliable, and trustworthy driver, who is chosen for the most sensitive shipments. Similarly, his three character witnesses praise his work ethic, loyalty to the U.S., and honesty (Tr. 26-30; 31-34; 35-38). I found Applicant to be an honest and straightforward witness.

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

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. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

None.

### **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

### **CONCLUSIONS**

The government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness and his current non-payment on the delinquent accounts. Applicant brought his financial problems upon himself, first by failing to file federal income tax returns that he knew he had to file, and then by failing to keep up payments on his agreed installment plan. He has made no payments on these accounts since 1998, except for the IRS' seizure of his tax refunds for 1995-2000. Although he stated an intent to pursue an offer in compromise in January 2002, he did not begin to pursue compromise until February 2003, and the offer has still not been proposed. His tax accounts continue to accrue interest and penalties.

Applicant meets none of the mitigating factors for financial considerations. The indebtedness was not due to circumstances beyond his control. He has not initiated a good-faith effort to address the debts. Indeed, he defaulted on the installment plan he negotiated. His tax indebtedness is too large and his repayment plan too little evolved to conclude that Applicant's financial problems are behind him. <sup>(7)</sup> I resolve Guideline F. against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Applicant began dealing with one IRS office, but his case was transferred to a different office that would not accept the records he had generated for the other office (Tr. 39-40).
3. Although he estimated the debt at \$75,000.00.
4. Although, Applicant now asserts, without corroboration, that he and his wife paid on the installment plan for over a year (Tr. 43).
5. However, Applicant's tax refunds for tax years 1995, 1996, 1997, 1998, 1999, and 2000 have all been credited to Applicant's tax account for tax year 1987.
6. Yet, while Applicant made this statement in January 2002, he did not begin looking for a firm to represent him before the IRS until late 2002, and did not retain a firm to make the offer until February 2003 (A.E. A).
7. However, I consider the one collection account to have no security significance in the context of the overall tax delinquencies.