

DATE: January 18, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31756

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's financial problems arose in 1993, two years before a divorce in which he obtained custody of his three children. Although caring for his children impacted his ability to pay his debts, it fails to fully mitigate or excuse delinquent financial indebtedness totaling \$47,612.00 that he incurred over a 10 year period. Seven federal and state tax liens against him totaling \$30,715.00 were only reduced through garnishment, as was an arrearage for child support in the amount of \$8,350.00. Moreover, Applicant has done nothing to satisfy or reduce nine additional delinquent debts totaling \$8,547.00. In addition, he has failed to adequately explain his failure to fully disclose the extent of his financial indebtedness on his security clearance application. Clearance is denied.

STATEMENT OF THE CASE

On October 1, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order (1) and Department of Defense Directive, (2) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On November 10, 2003, DOHA received Applicant's answer to the SOR, in which he requested a hearing. The case was assigned to me on March 5, 2004. A notice of hearing was issued on April 28, 2004 and the hearing was held on May 20, 2004. During the hearing, 11 Government exhibits (Govt Ex), 14 Applicant exhibits (Ap Ex) and the testimony of Applicant were received. The transcript (Tr) was received on June 1, 2004.

PROCEDURAL ISSUE

Without objection by Department Counsel, I granted Applicant until March 3, 2004 to provide documentation pertaining to the status of his indebtedness. Without objection by Department Counsel, I have marked Applicant's post-hearing

submission, including Department Counsel's response, as Ap Ex C and have considered it in reaching my decision.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 44-year-old computer technician employed by a defense contractor. He married his second wife in 1990. They had three children between 1991 and 1994. Applicant divorced his wife in 1995 and retained custody of their three children, including his oldest son who suffers from an attention-deficit disorder.

In 1993, 1997, 1999, and 2001, seven federal and state tax liens, totaling \$30,715.00, were filed against Applicant. Some portion of this debt that cannot be determined from the record was paid through the garnishment of his pay. To date, Applicant has not fully paid or otherwise settled the debt (SOR ¶ 1.k).

In November 1994, Applicant opened an account with a credit card company. By July 1995, he had not paid an overdue balance on the account in the amount of \$3,705.00 and it was charged off as a bad debt. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.f).

In 1995, Applicant became delinquent on four accounts with the county in which he resided and they were transferred to a debt collector. Those accounts in the amount of \$487.00 have not been paid or otherwise settled (SOR ¶ 1.h).

In September 1996, Applicant opened an account and obtained credit in the amount of \$1,135.00. By November 1996, he had not paid the debt and it was transferred to a debt collector. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.g).

In March 1997, Applicant incurred a medical bill in the amount of \$145.00. By December 2001, he had not paid the debt and it was transferred to a debt collector. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.e).

In June 1998, Applicant incurred a doctor's bill. By August 1999, he had not paid an overdue balance on the account in the amount of \$103.00 and it was transferred to a debt collector. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.c).

In March 2000, Applicant was delinquent in the payment of rent and related charges in the amount of \$1,968.83. The debt was subsequently transferred to a debt collector. To date, Applicant has not paid or otherwise settled this debt (SOR ¶ 1.i).

In September 2000, Applicant incurred a medical laboratory bill in the amount of \$126.00. By June 2002, he had not paid the bill and it was transferred to a debt collector. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.d).

In January 2001, Applicant incurred a medical doctor's bill. By August 2002, he had not paid an overdue balance on the account in the amount of \$232.00 and it was transferred to a debt collector. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.b).

On January 23, 2001, a state court ordered Applicant to pay child support of \$200.00 per month plus an additional \$40.00 per month to satisfy an arrearage of \$8,350.00. The child support was for Applicant's daughter who was born in 1983. The court also directed the garnishment of Applicant's pay to implement the order. To date, Applicant has not fully paid or otherwise settled this debt (SOR ¶ 1.j).

In July 2002, Applicant rented a storage unit. By May 2003, he had not paid an overdue balance on the account in the amount of \$646.00 and it was transferred to a debt collector. To date, Applicant has not paid or otherwise settled the debt (SOR ¶ 1.a).

On September 28, 2000, Applicant executed a security clearance application (SF 86). In response to question 36, [\(3\)](#) Applicant answered, "no," and failed to list the tax liens filed against him in 1993, 1997, and 1999 (SOR ¶ 2.a). In

response to question 38⁽⁴⁾ on the same SF 86, Applicant answered, "yes," but only disclosed rent in the amount of \$910.00 and child support in the amount of \$240.00 (SOR ¶ 2.b).

On August 2, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) and provided a sworn statement. He stated, " in Oct 02, I will begin to make monthly payment plans or settlements with my delinquent creditors" (sic). Applicant included a personal financial statement that reflects a monthly net remainder of \$631.00. His personal financial statement includes no provision for the payment of any of the delinquent debts addressed by the SOR other than the payment of his child support arrearage through garnishment (SOR ¶ 1.1).

In 2004, Applicant incurred a \$7,695.45 hospital bill for the treatment of his youngest son following an accident. He had no medical insurance to cover it and has not yet applied for public assistance to pay the bill.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A6.1.3.1, the behavior was not recent (Mitigating Condition 1), and E2.A6.1.3.3, 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) (Mitigating Condition 3). They also include E2.A6.1.3.6, the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (Mitigating Condition 6).

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers the deliberate omission, concealment, or falsification 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.

CONCLUSIONS

Guideline F: Financial Considerations

The record establishes Applicant's history of not meeting financial obligations, as well as his inability or unwillingness to satisfy debts. Over a ten year period, he incurred both federal and state tax liens totaling \$30,715.00. During this period, he also incurred a child care arrearage of \$8,350.00 and nine additional delinquent debts totaling an additional \$8,547.00. This record raises both Disqualifying Condition 1 and Disqualifying Condition 3.

To a degree, Applicant's financial problems are explained by having to care for his three children. He has been particularly challenged in caring for his oldest son because of the attention-deficit disorder from which he suffers. It is commendable that Applicant has attempted to care for his children when their mother was apparently not interested in doing so. However, this does not explain or mitigate his inability to resolve his delinquent indebtedness for more than a decade. Moreover, Applicant's financial problems arose well before the divorce because he incurred the first tax liens two years earlier.

Although it can be determined from the record that his delinquent taxes child support arrearage have been reduced to some extent, Applicant admits that he still owes balances on those accounts. In addition, any reductions in those liabilities are not attributable to his actions but resulted from the involuntary garnishment of his pay. Although he suggested his oldest daughter may have been living with him during part of the period for which child support was assessed, he provided no evidence to corroborate his testimony. Moreover, Applicant has failed to make any progress in reducing his remaining indebtedness, including three debts of less than \$150.00. In fact, he now denies indebtedness that was included in his personal financial statement in 2002. Although Applicant produced a recent bill for his son's hospitalization, he may be receive public assistance to pay it. Furthermore, it does not mitigate his failure to address his delinquent indebtedness for the last 10 years. Given this record, Applicant has not met his burden of persuasion with regard to his financial indebtedness. Therefore, I find against Applicant with respect to SOR ¶ 1.

Guideline E: Personal Conduct

Applicant's failure to report his tax liens and his omission of most of his delinquent indebtedness on his SF 86 raises Disqualifying Condition 2. He testified he did not understand that tax liens were applied to his pay when it was garnished to satisfy his delinquent taxes. The record supports his explanation because he acknowledged the state's garnishment of his pay to collect delinquent taxes in response to question 34 on his SF 86. However, he failed to explain his omission of most of his delinquent indebtedness from his SF 86. Moreover, he only disclosed delinquencies of one month's rent and one month's child support rather than his total arrearage. In this case, Applicant has failed to demonstrate that his omission was not intentional. Therefore, I find against Applicant with regard to SOR ¶ 2.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?"
4. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?"