

DATE: October 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16967

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between September 1991 and March 1996, three federal tax liens and two state tax liens totaling \$17,400.00 were levied against the Applicant. The liens have not been paid. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from the unsatisfied tax liens. Clearance is denied.

STATEMENT OF THE CASE

On March 24, 2003, 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 [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 15, 2003, the Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On August 12, 2003, the Applicant received a complete copy of the file of relevant material (FORM) dated July 24, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on September 1, 2003. No response has been received. I was assigned the case on October 3, 2003. The Department Counsel presented eleven exhibits (Items).

FINDINGS OF FACT

The SOR alleges financial considerations under Guideline F. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

The Applicant is 47-years-old, has worked for a defense contractor since April 1999, and is seeking a security clearance.

In September 1991, a federal tax lien was levied against the Applicant in the amount of \$1,100.00 for tax year 1988. (Item 6) In January 1992, a federal tax lien was levied against the Applicant in the amount of \$3,873.57 for tax year 1989. (Item 7) Also in January 1992, a federal tax lien was levied against the Applicant in the amount of \$3,531.99 for

tax year 1990. (Item 8) In May 1994, a state tax Lien was levied against the Applicant in the amount of \$4,169.47 for tax year 1991. (Item 9) In March 1996, a state tax Lien was levied against the Applicant in the amount of \$4,725.08 for tax years 1992 and 1993. (Item 10)

The five tax liens were reflected in the Applicant's credit report, dated June 2001. (Item 5)

The two state tax liens were reflected in the Applicant's credit report, dated July 2003. (Item 11) In January 2001, the Applicant completed a Security Clearance Application (SF 86). He answered no to question 36, which asked him if, during the previous seven years, any tax liens have been placed against him for failing to pay taxes. (Item 4)

The Applicant alleges he did not file taxes for years 1991 through 1993 because his income was below \$7,000. The Applicant alleges he is contacted the IRS and been told he has no debt with the IRS. The Applicant has failed to provide any documentation supporting this allegation. As of April 2003, the Applicant had contacted his state and been informed that he owed \$5,562.00. (Item 2)

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. 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.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Financial Considerations, Guideline F. 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.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)

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

Not apply.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline F, Financial Considerations. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. Under Guideline F, an applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Between September 1991 and March 1996, three federal tax liens and two state tax liens were levied against the Applicant totaling \$17,400.00. These obligations have not been paid. The liens show a history of failing to meet financial obligations making Disqualifying Conditions (DC) 1⁽²⁾ applicable and evidences an unwillingness or inability to satisfy these tax liens. Therefore, DC 3⁽³⁾ applies.

None of the Mitigating Conditions (MC) apply in the Applicant's favor. The conduct is recent (MC 1)⁽⁴⁾ in that the liens remain unpaid. The Applicant alleges he does not owe any federal tax and says he contacted the IRS and been told there is no debt. However, the Applicant has not submitted a satisfaction of lien or other document from the IRS supporting his claim. The Applicant indicated he had contacted the state and been informed he owes \$5,562 for back state taxes. The Applicant alleges his income for 1991 through 1993 was such that he was not required to file tax returns. However, the Applicant has offered no documentation to support this claim. He has not provided W-2s, tax returns, or any other documentation as to his income for those years. Additionally, the three federal tax liens are for years 1988, 1989, and 1990, which are tax years prior to the time the applicant complains he did not have to file returns.

The debts are not isolated since there are five tax liens. Therefore, MC 2⁽⁵⁾ does not apply. There is no evidence the Applicant's failure to file and pay his taxes was due to factors beyond his control. Therefore, MC 3⁽⁶⁾ does not apply. MC 4⁽⁷⁾ does not apply because there is no evidence the Applicant has received financial counseling in the debts are being resolved. For MC 6⁽⁸⁾ to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good faith effort to repay. A systematic, concrete method of handling these debts is needed, which is not present here. The tax liens were levied between September 1991 and March 1996. The Applicant has failed to introduce evidence of any corrective actions he has taken to resolve these liens during the 7 to 12 years since these liens were levied.

I find against the Applicant as to SOR subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's

age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1. Financial Considerations, Guideline F: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against 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 the Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
3. DC 3. Inability or unwillingness to satisfy debts. (E2.A6.1.2.3.)
4. MC 1. The behavior was not recent.
5. MC 2. It was an isolated incident.
6. 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). (E2.A6.1.3.3.)
7. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control. (E2.A6.1.3.4.)
8. MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.