

KEYWORD: Financial; Personal Conduct

DIGEST: Sixty-two-year-old Applicant, as of August 2004, had not yet filed her federal income tax returns for the tax years 1986-91. She and her husband have made monthly payments to the IRS under an installment agreement since 1996. In September 2003, their tax arrearage was nearly \$400,000.00. Her husband attributed their actions largely to procrastination, no money to pay the taxes, inability to contact a particular accountant for around 10 years, and inability to collect all necessary paperwork. They disputed the IRS method of calculating estimated tax liabilities, but have failed to submit documentation to support their contentions, even after this security clearance review process commenced. The absence of timely efforts to resolve the debts, too many unfulfilled promises to do so, and her lack of candor, raise grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

CASENO: 02-21484.h1

DATE: 01/19/2005

DATE: January 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21484

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Sixty-two-year-old Applicant, as of August 2004, had not yet filed her federal income tax returns for the tax years 1986-91. She and her husband have made monthly payments to the IRS under an installment agreement since 1996. In September 2003, their tax arrearage was nearly \$400,000.00. Her husband attributed their actions largely to procrastination, no money to pay the taxes, inability to contact a particular accountant for around 10 years, and inability to collect all necessary paperwork. They disputed the IRS method of calculating estimated tax liabilities, but have failed to submit documentation to support their contentions, even after this security clearance review process commenced. The absence of timely efforts to resolve the debts, too many unfulfilled promises to do so, and her lack of candor, raise grave questions and doubts as to her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On December 1, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In an unsworn and undated written statement, Applicant responded to the allegations in the SOR and requested a hearing. The case was assigned to me on August 2, 2004. A notice of hearing was issued that same day, and the hearing was held before me on August 18, 2004. During the hearing, seven government exhibits, and four Applicant exhibits, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on September 10, 2004.

RULINGS ON PROCEDURE

Applicant's husband had also received an SOR for allegations which were nearly identical to those appearing in Applicant's SOR. Accordingly, they were treated as co-subjects and a joint hearing was conducted without objection.

At the commencement of the proceeding, Department Counsel moved to amend five allegations to conform to the expected evidence. Specifically, in the last sentence of subparagraphs 1.a. through 1.e., the word "paid" was to be deleted with the words "completely satisfied" to be substituted therefore. Also, subparagraph 2.b. was to be withdrawn. There being no objection by Applicant, the motions were granted, and the changes were made.

FINDINGS OF FACT

Applicant has admitted three of the factual allegations pertaining to financial matters under Guideline F (subparagraphs 1.f. through 1.h.). Those admissions are incorporated herein as findings of fact. She denied the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. and 2.b.), as well as the remaining allegations 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:

Applicant is a 62-year-old self-employed subcontractor--a co-owner-operator truck driver--of a defense contractor seeking to retain the SECRET security clearance which had been granted to her in 1989. ⁽¹⁾ She has been in the trucking business--as a co-driver with her husband (whom she married in 1961) since April 1981--hauling freight, including ammunition, explosives, and weapons, ⁽²⁾ and has been affiliated with a number of different trucking companies. Her current affiliation commenced in 1992. ⁽³⁾

Prior to 1986, Applicant and her husband routinely filed their federal income tax returns and generally received refunds. ⁽⁴⁾

However, in 1986, and each year thereafter, until 1991, for a variety of reasons, they failed to file federal income tax returns, and, as of the date of the hearing, those filings have still not been made.⁽⁵⁾ Income tax returns for 1992 through 1995 were not filed until 1996-97.⁽⁶⁾ Their excuses for failing to file are: very low income,⁽⁷⁾ procrastination,⁽⁸⁾ no money to pay the taxes,⁽⁹⁾ inability to contact a particular accountant (for around 10 years),⁽¹⁰⁾ inability to collect all necessary paperwork,⁽¹¹⁾ and "it just snowballed."⁽¹²⁾

In June 1995, the Internal Revenue Service (IRS) filed a notice of federal tax lien against Applicant's husband, in the amount of \$177,760.01, for unpaid income taxes, interest, and penalties for the tax years 1986 through 1991.⁽¹³⁾ The notice was sent to her husband at an old residence address that they had left approximately 11 years earlier.⁽¹⁴⁾ It is unclear if Applicant was also separately named in the lien as a co-taxpayer. In September 1996, the IRS filed another notice of federal tax lien against them--this time in the location where they resided--in the amount of \$8,498.00, for unpaid income taxes, interest, and penalties for the tax year 1994.⁽¹⁵⁾ Applicant and/or her husband eventually met with the IRS in 1996, and at that time, arrangements were made for the filing of past due income tax returns and payment of amounts due the IRS.⁽¹⁶⁾ An installment agreement, calling for monthly payments, had already been made in July 1996. Monthly \$250.00 payments have been made to the IRS since that time.⁽¹⁷⁾

Applicant and her husband dispute the IRS method of calculating estimated tax liabilities because it does not take into consideration such factors as number of dependents, operational expenses, or other deductions,⁽¹⁸⁾ but they have, so far, failed to submit documentation to support those expenses because the paperwork is scattered in a variety of locations.⁽¹⁹⁾ The IRS has a policy of applying all installment agreement payments to the oldest tax owed.⁽²⁰⁾ Applicant and her husband contend the monthly payments and overpayments from other tax years are being applied to the most recent tax years first,⁽²¹⁾ but acknowledged payments have been applied to their income tax liability for 1986, 1989, 1992, and 1995.⁽²²⁾

In December 2001, while being interviewed by a special agent of the Defense Security Service (DSS), Applicant and her husband both indicated they intended to file an Offer [in] Compromise with the IRS in an effort to reduce and resolve their outstanding federal income tax issues.⁽²³⁾ One and one-half years later, in June 2003, Applicant indicated their CPA "is filing paper work for an Offer [in] Compromise on this tax debt."⁽²⁴⁾ In his undated 2003 Response to SOR, Applicant's husband stated an Offer in Compromise "is being prepared by my accountant" to send to the IRS.⁽²⁵⁾ During the hearing, in August 2004, Applicant's husband refined his earlier statements and said he had seen his accountant in March 2004, but it had not yet been completed, or filed, because they had not yet located all the necessary documents to complete the action.⁽²⁶⁾

As of September 10, 2003, the status of Applicant's federal income tax arrearage--totaling \$395,438.36--was as follows:⁽²⁷⁾

Tax Year	Estimated Unpaid Tax	Accrued Interest	Total Balance Due
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1986	\$41,906.87	\$45,743.50	\$87,650.37
1987	\$34,314.70	\$33,068.51	\$67,383.21
1988	\$32,319.01	\$31,052.23	\$63,371.24
1989	\$27,729.56	\$26,634.45	\$54,364.01
1990	\$27,016.86	\$25,765.41	\$52,782.27
1991	\$24,491.04	\$23,266.81	\$47,757.85
1992	\$1,968.63	\$4,137.03	\$6,206.19 (28)
1994	\$8,515.32	\$6,374.70	\$15,923.22 (29)
1995	overpaid	none	zero

As of the date of the hearing, all current payments to the IRS are being applied solely to the balance remaining for 1992, [\(30\)](#) with that balance indicated as \$4,111.54. [\(31\)](#)

On some otherwise unspecified date in 2001, alleged in the SOR to be November 11, 2001, Applicant completed a Security Clearance Application (SF 86), [\(32\)](#) and in response to a finance-related inquiry: *(In the last 7 years, have you been over 180 days delinquent on any debt(s)?*, [\(33\)](#) Applicant responded "no." [\(34\)](#) She certified her response was true, complete, and accurate, but it was obviously false, for Applicant failed to mention her federal income tax delinquencies. Applicant's husband replied to the same question in his SF 86 in the same way, and denied intending to falsify his response and explained the delinquencies did not exist because, at the time he completed the SF 86, they were covered by his installment agreement with the IRS, and he was making payments. [\(35\)](#) Her position is the same. I find Applicant was not candid when she completed this question and the facts do not support her contentions. Applicant's federal income tax returns for the years 1986-91 were still not filed when she made her response and the delinquencies associated with her actions were clearly continuing for over 180 days.

In response to another finance-related inquiry: *(Are you currently over 90 days delinquent on any debt(s)?*, [\(36\)](#) Applicant responded "no." [\(37\)](#) She certified this response was also true, complete, and accurate, but it was obviously false, for Applicant again failed to mention her federal income tax delinquencies. Applicant denied intending to falsify her response and furnished the same explanation and justification for her response to the previous question. I find Applicant was not candid when she completed this question and the facts do not support her contentions. Applicant's federal income tax returns for the years 1986-91 were still not filed when she made her response and the delinquencies associated with her actions were clearly continuing for over 90 days.

The quality of Applicant's work performance is not known.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Financial Considerations - Guideline F: 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.

Personal Conduct - Guideline E: 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, as well as those which could mitigate security

concerns, pertaining to both adjudicative guidelines are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard the issuance of the clearance is "clearly consistent with the interests of national security," [\(38\)](#) or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded both standards are one and the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline F. Applicant's failure, to date, to file federal income tax returns for the tax years 1986-91,

and her delayed filing of returns for 1992-95 until 1996-97, without approved IRS extensions, fall within Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. (*history of not meeting financial obligations*), FC DC E2.A6.1.2.2. (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*), and FC DC E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). Her failure to file some returns, as well as her late filing of others, has caused her federal income tax liability to mushroom to \$395,438.36, as of September 2003.

Considering the length of time involved and the degree of her procrastination, aside from the installment agreement with the IRS, Applicant has not even made superficial efforts to resolve her outstanding financial obligations, and her varying statements seem to be nothing more than perpetual promises made and broken, followed by additional promises made and broken. Not even this security clearance review process could motivate her to take *some* positive action with regard to resolving the disputed estimated unpaid taxes. Instead of making the collection of income tax records and meeting with an accountant priorities in her life, Applicant has seemingly washed her hands of her responsibility and looked to a resolution of her problems by fantasizing about a potential Offer in Compromise. She seems satisfied with the installment agreement with the IRS which mandates \$250.00 monthly payments, even when she has the ability to pay much more. At that rate, Applicant will not even come close to paying off the balance within her lifetime.

It is apparent that Applicant's current finances are presently in pretty good shape, with no other financial delinquencies. For reasons not satisfactorily explained, she simply chose not to file her federal income tax returns or pay her taxes in a timely manner. Her explanations, as well as those of her husband, for not doing so: a very low income, procrastination, no money to pay the taxes, inability to contact a particular accountant for around 10 years, inability to collect all necessary paperwork, and it just snowballed, are not, in my view, acceptable. Applicant's persistent problem is not, and has never been, the result of conditions beyond her control. Instead, it is her intransigence. Moreover, the record is unclear as to whether Applicant approached the IRS regarding the installment agreement or if the IRS finally caught up with her and imposed the installment agreement. In the former situation, she would receive credit under Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.6. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). In the latter situation, she would not. Nevertheless, because of her faithful adherence to the installment agreement, I have given her substantial credit. However, other than her moderate payments under that agreement, she has made no other efforts to resolve her debts. Under these circumstances, I believe Applicant has failed to mitigate or overcome the government's case, for the evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability with respect to her financial considerations. Accordingly, amended allegations 1.a. through 1.e., as well as allegations 1.f. through 1.h., of the SOR are concluded against Applicant.

The government has established its case under Guideline E. Examination of Applicant's actions reveals conduct involving questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations. There is little dispute surrounding Applicant's actions. She consistently failed to file federal income tax returns in some cases and filed them very late in others, in violation of the law. Likewise, when she completed her SF 86, she lied, willfully falsified, omitted, and concealed her debts with the IRS that were over 180 days delinquent. Applicant is steadfast in her position she did not intend to falsify or omit the correct information. Instead, her explanation is, at the time she completed the SF 86, the debts were covered by her installment agreement with the IRS, and she was making payments. As I indicated above, Applicant was not candid when she completed this question and the facts do not support her contentions. Her federal income tax returns for the years 1986-91 were still not filed when she made her response and the delinquencies associated with her actions were clearly continuing for over 180 days. In this instance, I have no credible evidence of inadvertent or accidental oversight, but rather what appears to be a calculated and deliberate omission of information which Applicant chose not to reveal.

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system.

Applicant's overall questionable personal conduct in this regard clearly falls within Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*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*) and PC DC E2.A5.1.2.5. (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*). None of the Mitigating Conditions apply.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent conditions and factors under the Adjudicative Process, Applicant has failed to mitigate or overcome the government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegation 2.a. of the SOR is concluded against Applicant. Allegation 2.b. has been withdrawn.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. 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

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Withdrawn

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. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. Government Exhibit 1 (Security Clearance Application (SF 86), undated), at 7.

2. Tr., at 73-74, 93-94.

3. Government Exhibit 1, *supra* note 1, at 2.

4. Tr., at 40-41.

5. Tr., at 50, 54.

6. Tr., at 51.

7. Tr., at 42.

8. Tr., at 39.

9. Tr., at 39.

10. Tr., at 71.

11. Tr., at 65.

12. Tr., at 39.

13. Government Exhibit 7 (Notice of Federal Tax Lien, dated June 16, 1995).

14. The notice was sent in June 1995, but Applicant and his wife had moved from the address in 1984. Tr., at 38, 63.

15. Response to SOR, undated, at 1; co-subject's Response to SOR, undated, at 2.

16. Tr., at 40; *Id.* Co-subject's Response to SOR, at 1.

17. Applicant Exhibit D (Ledger Entries, undated).

18. Tr., at 50, 55, 60; Response to SOR, *supra* note 15, at 1; co-subject's Response to SOR, *supra* note 15, at 1.

19. Tr., at 50-51.

20. IRS Monthly Statement, dated January 5, 2000, attached to Response to SOR, *supra* note 15.

21. Tr., at 52.

22. Response to SOR, *supra* note 18, at 2.

23. Government Exhibit 4 (Statement of Subject, dated December 29, 2001), at 3.

24. Government Exhibit 6 (Applicant's wife's Response to Financial Interrogatory, dated June 25, 2003), at 3.

25. Response to SOR, *supra* note 18, at 3.

26. Tr., at 64-66, 109-110.

27. IRS taxpayer transaction statements, dated September 9, 2003, attached to Response to SOR, *supra* note 15.

28. Amount includes accrued penalty of \$100.53.

29. Amount includes accrued penalty of \$1,033.20.

30. Tr., at 53.

31. Applicant Exhibit C (IRS account statement, dated July 12, 2004).

32. Government Exhibit 2, *supra* note 1.

33. Question 38.

34. Government Exhibit 1, *supra* note 1, at 8.

35. Response to SOR, *supra* note 15, at 2; co-subject's Response to SOR, *supra* note 15, at 3.

36. Question 39.

37. Government Exhibit 1, *supra* note 1, at 9.

38. Exec. Or. 12,968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)