

KEYWORD: Financial

DIGEST: Applicant's financial problems raise security concerns because of her repeated delays in resolving tax debts to the Internal Revenue Service (IRS) for tax liens filed in 1995 for non-payment of delinquent tax debts from 1987, 1989, 1990, and 1991 which total over \$50,000. She failed to demonstrate her commitment to becoming financial responsible by developing a plan to resolve these debts even though she has a stable job. Clearance is denied.

CASENO: 02-24890.h1

DATE: 03/02/2005

DATE: March 2, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-24890

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant's financial problems raise security concerns because of her repeated delays in resolving tax debts to the Internal Revenue Service (IRS) for tax liens filed in 1995 for non-payment of delinquent tax debts from 1987, 1989, 1990, and 1991 which total over \$50,000. She failed to demonstrate her commitment to becoming financial responsible by developing a plan to resolve these debts even though she has a stable job. Clearance is denied.

### STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 17, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. <sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F). Applicant responded to these SOR allegations in an Answer notarized on December 6, 2003, and admitted allegations 1.a., 1.b. with explanation and denied 1. On January 29, 2004, she requested a decision without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on April 30, 2004, which was forwarded to Applicant. She received it on May 20, 2004, and responded with a letter of June 18, 2004 (Exhibit A). Department Counsel did not object to Exhibit A. On July 7, 2004, the case was assigned to me. On January 21, 2005, I wrote to Applicant to give her an opportunity to provide updated information. On February 4, 2005, she responded (Exhibit B); and I forwarded her response to Department Counsel for review on February 7, 2005. On February 11, 2005, Department Counsel did not object to Exhibit B.

## **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 61 years old, has been self-employed as a defense contractor in State #1 since July 1996; she resides in State #2. She completed a Security Clearance Application (SF 86) in February 2001. Previously, she was self-employed from 1983 to 1996 in State #3. She was granted a Defense Department Secret clearance in April 1988. (Exhibit 6) Applicant has hauled freight for the government since 1983. (Exhibit 11)

Applicant is married. (Exhibit 6)

### **Finances**

In the SF 86 Applicant documented a Tax Lien filed in November 1995 and stated that a CPA was "handling." A March 2001 credit report documented Federal Tax Liens filed in November 1995 for \$44,819, \$5,882, and \$25,200. (Exhibit 8) Notices of Federal Tax Liens showed Unpaid Balances from Tax years 1987 for \$4,4819 and from tax years 1989, 1990, 1991 for \$44,819 with tax liens filed against property in State #4. (Exhibits 9, 10)

Applicant was interviewed by the Defense Security Service (DSS) in May 2002 and was asked about her financial problems. Applicant provided a statement where she said their financial problems began when she fell out of truck and injured herself; health insurance did not cover all of the expenses. She was out of work from April to July 1996. In July 1996 she and her husband left one employer and went to work for a new employer. She was out of work until October 1998 and their son had to help them. They returned to work in November 1998 and had problems with their truck in December 1998. It was repaired in January 1999 for over \$5,000. In July 2001 Applicant was ill again and medical insurance did not cover all of the costs. Applicant stated her accountant had filed her taxes for 1989, 1990, and 1991; she did not know how she accrued tax liabilities for those years. In May 2002 she had a total tax liability of \$75,000. She reported working with a tax service to find a compromise with the IRS to remove the tax liens. She reported monthly income of \$6,745; expenses of \$3,548; monthly debts of \$3,111 with a net remainder of \$86. (Exhibit 7)

Applicant responded to a Financial Interrogatory submitted in April 2003 and responded to the SOR in December 2003: she reported that her insurance had failed to pay over \$41,000 in medical bills. She stated they were paying the IRS for taxes, but were unable to continue after she was injured. She anticipated having the truck completely paid off in five months which would provide an additional \$1,200 for bills. She and her husband chose not to file for bankruptcy but to work and pay bills. She chose to pay her other bills over resolving the tax lien on their mortgaged property as "The house and land is not going anywhere." She anticipated being able to pay on the lien in January 2004. (Exhibit 3, 11)

In June 2004 she stated she had written to the IRS asking for a payment schedule but had not had a response. She stated she was working hard to improve her financial situation. (Exhibit A) In February 2005 Applicant reported that in 1995 they were paying the IRS \$250 per month and were told that this amount was not enough, so the IRS would put a lien on their house and land. In 1999 they paid off the mortgage on the property and land. She reported no further efforts on her part to communicate with the IRS. (Exhibit B)

SOR 1.a. Applicant admits the \$5,888 debt to the IRS is unresolved; a lien was placed against her in October 1995 for non-payment of the delinquent tax debt. (Exhibit 3)

SOR 1.b. Applicant admits the \$44,819 debt to the IRS is unresolved; a lien was placed against her in October 1995 for non-payment of the delinquent tax debt. (Exhibit 3)

She has not consulted any consumer credit counseling service and does not have a plan in place to resolve any of these debts. (Exhibits A, B)

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

### **Guideline F - Financial Considerations**

**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;
3. Inability or unwillingness to satisfy debts;

**Conditions that could mitigate security concerns include:**

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Financial Considerations**

Applicant has (1) a history of financial problems and subsequently has shown (3) an inability or unwillingness to resolve any of her debts to the IRS. She has developed no plan or no time table to resolve the tax liens filed in 1995. Instead, she stated she chose to pay her other bills over resolving the tax liens on their property as "The house and land is not going anywhere."

Applicant failed to mitigate<sup>(2)</sup> these concerns. She anticipated being able to pay on the lien in January 2004, but she provided no evidence she did so. While in her June 2004 in response to the FORM she stated she had written to the IRS asking for a payment schedule but she had not had a response, she documented no efforts to re-contact the IRS to develop a plan to resolve these long-standing tax liens. While she stated she was working hard to improve her financial situation, she has not documented that she sought any financial help or financial counseling. Instead of making the tax liens a priority, she made payments to other creditors. While she has stable employment and had incurred unexpected health expenses, those factors by themselves are not sufficient to mitigate these persistent financial concerns. In sum, she is not making a good-faith effort to resolve these tax debts.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 1; I conclude that she has failed to mitigate the allegations in SOR subparagraphs 1.a. and 1.b.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.