

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has not shown a good-faith effort to resolve his financial problems, which includes both federal and state tax liens for unpaid income taxes not filed for tax years 1996 and 2001. The federal tax lien totals \$11,898; the state tax lien totals \$1,439. No evidence was offered as proof that he filed his past due tax returns or paid the outstanding tax liens. Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. It is not clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

CASENO: 03-20275.h1

DATE: 05/11/2005

DATE: May 11, 2005

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-20275

**DECISION OF ADMINISTRATIVE JUDGE**

**JACQUELINE T. WILLIAMS**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has not shown a good-faith effort to resolve his financial problems, which includes both federal and state tax liens for unpaid income taxes not filed for tax years 1996 and 2001. The federal tax lien totals \$11,898; the state tax lien totals \$1,439. No evidence was offered as proof that he filed his past due tax returns or paid the outstanding tax liens. Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. It is not clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On June 10, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision: security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Applicant answered the SOR on July 1, 2004. Applicant admitted all of the factual allegations. He elected to have the case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on November 24, 2004. Department Counsel provided a complete copy of the file of relevant material (FORM) to Applicant, along with notice of his opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on December 10, 2004, but did not provide additional materials for consideration. The case was assigned to me on February 2, 2005.

## **FINDINGS OF FACT**

All of the factual allegations contained in the SOR are admitted. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following findings of fact:

Applicant is 31 years old and has been employed as a technician by a defense contractor since May 2000. He served in the Marines from 1992 to 1995, and is now on inactive reserve duty. He previously held a top secret security clearance in March 1994. Applicant was married in 2001 and has two children.

Because of an accumulation of personal debt which was unmanageable, Applicant filed a voluntary petition for Chapter 7 bankruptcy in United States Bankruptcy Court. His listed assets totaled \$895.00 and his listed liabilities totaled \$28,545.50. His unsecured debts were discharged on about August 20, 1997.

His financial statement in August 2003 revealed his net monthly salary to be \$2,184.00. He and his wife had a total net monthly income of \$4,144.00. Their expenses totaled \$3,398.00 and other monthly debts totaled \$731.00, leaving a net remainder of \$15.00.

Applicant failed to file federal income tax returns for the tax years 1996 and 2001. He is indebted to the Internal Revenue Services (IRS) on a federal tax lien filed against him in September 2000, in the amount of \$11,898.00, for unpaid federal income taxes for tax years 1996 and 2002. He also failed to file state income tax returns for the tax years 1996 and 2001. He is indebted on a state tax lien filed against him in January 2002, in the amount of \$1,439.90.

Regarding his delinquent tax situation, in a Sworn Statement on August 11, 2003, [\(1\)](#) Applicant stated:

I owe the IRS about \$13,000.00. This is taxes, penalties and interests for failing to file taxes in 1996 and 2001. I failed to file taxes because of irresponsibility on my part. I didn't file as I didn't understand a IRS Form 1099 and didn't realize the importance of filing/paying taxes. [sic] At the present I am unable to pay the taxes that I owe. I met with a representative of the IRS in 2001. I did a financial audit with them and they said I didn't make enough money to enter into a payment program and they would put a tax lien on me. I would like to eventually pay the taxes but am unable to do so and I am not sure when I will be able to pay them. I was unaware that I owed state taxes to . . . but I do not dispute this as I did not pay state or federal taxes.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline F, pertaining to financial considerations and Guideline E, pertaining to personal conduct, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation, and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof in a security clearance case is less than a preponderance of the evidence.<sup>(4)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.<sup>(5)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

No one has a right to a security clearance<sup>(7)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(9)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(10)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I finding the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline F - Financial Considerations:** a security concern exists when a person has significant delinquent debts. 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.

**Guideline E - Personal Conduct:** a security concern exists when a person has questionable judgment. 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 would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

### CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline F. Based on the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability to satisfy debts*) apply in this case. Applicant failed to resolve his financial problems, which includes both federal and state tax liens for unpaid income taxes not filed for tax years 1996 and 2001. He has failed to offer credible evidence demonstrating financial responsibility regarding the reasons his taxes were not filed. His behavior is not an isolated incident because he repeated his behavior of 1996 in 2001. I have considered all the Financial Considerations Mitigating Conditions under Guideline F and find that none of them apply. I conclude Applicant has failed to mitigate the security concerns arising from his financial difficulties.

The government has also established a case for disqualification under Guideline E. Based on all the evidence, Personal Conduct Disqualifying Condition (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*) applies in this case. Applicant failed to file both his federal and state income returns for two different tax years. Even after obtaining judicial relief through bankruptcy from his debt in 1997, he showed questionable judgment and an unwillingness to comply with the rules and regulations. Applicant failed to provide a credible explanation for this failure to file his tax debts. I have considered all the Personal Conduct Mitigating Conditions under Guideline E and conclude that none of them apply.

Applicant failed to offer credible evidence demonstrating financial responsibility regarding the reasons his taxes were not filed for two tax years. He acknowledged that he was irresponsible in not following through on his taxes. Applicant stated: "*I didn't understand a IRS Form 1099 and didn't realize the importance of filing/paying taxes.*"<sup>(11)</sup> *I do not find this statement credible since Applicant had been in the habit of filing both his federal and states taxes in the years prior to 1996 and in the intervening years between 1996 and 2001.*

*However, I find credible Applicant's explanation that he would pay the taxes if he had the money. Applicant has timely paid his financial obligations after his unsecured debts were discharged in Chapter 7 bankruptcy in August 1997. Applicant's financial statement submitted in August 2003 indicates his family had a total net monthly income of about \$4,144.00. Their expenses totaled \$3,398 and other monthly debts totaled \$731.00, leaving a net remainder of \$15.00. When possible, Applicant and his wife also take on additional employment to enhance their finances but these additional earnings have not made a significant impact on their current financial problems. Applicant has not mitigated the security concerns regarding financial considerations or personal conduct.*

*I carefully considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and*

vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is clearly not consistent with the national interest to grant Applicant a security clearance. Applicant has not mitigated the security concerns caused by his financial considerations and personal conduct. Accordingly, Guideline F, pertaining to financial considerations, is decided against Applicant. Guideline E, pertaining to personal conduct, is decided against Applicant.

### **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. Financial Considerations (Guideline F) AGAINST APPLICANT*

*Subparagraph 1.a Against Applicant*

*Subparagraph 1.b Against Applicant*

*Subparagraph 1.c Against Applicant*

#### *Paragraph 2. Personal Conduct ( Guideline E) AGAINST APPLICANT*

*Subparagraph 1.a Against Applicant*

*Subparagraph 1.b Against Applicant*

### **DECISION**

*In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.*

*Jacqueline T. Williams*

*Administrative Judge*

- 1. Item 10, Sworn Statement of Applicant (dated August 11, 2003) at 5.*
- 2. ISCR Case No. 96-0277 (July 11, 1997) at 2.*
- 3. ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.*
- 4. Department of Navy v. Egan, 484 U.S. 518, 531 (1988).*
- 5. ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.*
- 6. ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.*
- 7. Egan, 484 U.S. at 531.*
- 8. Id.*
- 9. Id.; Directive, Enclosure 2, ¶ E2.2.2.*
- 10. Executive Order 10865 § 7.*
- 11. Item 10, supra, at 2.*