

DATE: May 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24531

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial instability. As of July 21, 2003, she had not paid federal taxes, interest and penalties for eight specific tax years, and she had not paid state taxes, interest and penalties for three specific tax years. On her security clearance application, she falsified material facts regarding federal and county tax liens placed against her property. Applicant's financial problems and her lack of candor about them raise serious security concerns. 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. On December 27, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on January 28, 2005, and February 8, 2005, and requested her case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on March 7, 2005. The FORM contained documents identified as Items 1 through 13. By letter dated March 9, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM and filed her response by letter dated April 7, 2005. Department Counsel did not object to Applicant's submission. On May 11, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains nine allegations of disqualifying conduct charged under Guideline F, Financial Considerations, and six allegations charged under Guideline E, Personal Conduct. In her answer to the SOR, Applicant admitted all fifteen allegations. Her admissions are incorporated as findings of fact.

Applicant is a 66-year-old data technician employed by a defense contractor. Applicant and her husband have been married since November 1959. They are the parents of two adult children. (Item 5.) Applicant has held a security clearance for 20 years and needs a clearance to do her job. (Response to Form, at 1.)

Applicant completed and certified an application for a security clearance (SF-86) on January 23, 2002. Question 36 on the SF-86 reads: "In the last 7 years, have you had a lien placed against your property for failing to pay taxes and other debts?" Applicant answered "no" to Question 36.

Applicant has a history of financial problems. She owed federal taxes, interest and penalties for tax years 1992, 1993, 1995, 1996, 1997, 1998, 2000, and 2001. (Items 11.) These debts had not been paid as of July 21, 2003 and totaled approximately \$27,812.37. Notices of federal tax liens were filed against Applicant on December 29, 1995 for the federal tax delinquencies of 1992 and 1993. Notices of federal tax liens were filed against Applicant on March 30, 2001 for her federal tax delinquencies of 1995, 1996, 1997, and 1998. Applicant owed state taxes, interest, and penalties for tax years 1988, 1989, and 1990, which, as of July 21, 2003, had not been satisfied and which totaled approximately \$1,657.54. Applicant had three county tax liens placed against her in 1997, one county tax lien placed against her in 1998, and one county tax lien placed against her in 1999. These liens totaled approximately \$2,448.

In June 2004, Applicant negotiated an agreement with the Internal Revenue Service to pay

\$550 per month on her federal tax liabilities. Her first monthly installment was due August 28, 2004. (Item 3, at 7-8.) Applicant's five county tax liens were released January 10, 2000.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." Exec. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

CONCLUSIONS

Guideline F-Financial Considerations

The Government's concern under Guideline F, Financial Considerations, is that individuals who are financially overextended and unable or unwilling to pay their just debts may try to generate funds by engaging in illegal acts. Applicant has a history of not meeting her financial obligations, and this financial history suggests an inability or unwillingness to satisfy her debts, conditions which raise security concerns under subparagraphs E2.A6.1.2.1. and E2.A6.1.2.3. of Guideline F. By evading her responsibility to pay federal income taxes and state and county taxes, she has raised a security concern under subparagraph E2.A6.1.2.2. of Guideline F. DOHA's Appeal Board has concluded that "[a] person who is unwilling to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." ISCR Case No. 98-0810 at 4 (App. Bd. June 8, 2000).

In the SOR, DOHA alleged that Applicant owed the Internal Revenue Service approximately \$3,811.24 in taxes, penalties, and interest for tax year 1992, that a notice of federal tax lien was filed against her December 29, 1995, for non-payment of the federal tax debt, and, that, as of July 21, 2003, the debt had not been satisfied (¶ 1.a.); that she owed the Internal Revenue Service approximately \$5,088.72 in taxes, penalties, and interest for tax year 1993, that a notice of federal tax lien was filed against her on December 29, 1995, for non-payment of the federal tax debt, and that, as of July 21, 2003, the debt had not been satisfied (¶ 1.b.); that she owed the Internal Revenue Service approximately \$6,662.79 in taxes, penalties, and interest for tax year 1995, that a notice of federal tax lien had been filed against her on March 30, 2001, for non-payment of the federal tax debt, and that as of July 21, 2003, the debt had not been satisfied (¶ 1.c.); that she owed the Internal Revenue Service approximately \$1,022.01 in taxes, penalties and interest for tax year 1996, that a notice of federal tax lien had been filed against her March 30, 2001, and that, as of July 21, 2003, the debt had not been satisfied (¶ 1.d.); that she owed the Internal Revenue Service approximately \$238.38 in taxes, penalties, and interest for tax year 1997, that a notice of federal tax lien had been filed against her on March 30, 2001, and that, as of July 21, 2003, the debt had not been satisfied (¶ 1.e.); that she owed the Internal Revenue Service approximately \$859.82 in taxes, penalties, and interest for tax year 1998, that a notice of federal tax lien had been filed against her on March 30, 2001, and that, as of July 21, 2003, the debt had not been satisfied (¶ 1.f); that she owed the Internal Revenue Service approximately \$3,201.12 in taxes, penalties, and interest for tax year 2000, and, as of July 21, 2003, the debt had not been satisfied (¶ 1.g.); that she owed the Internal Revenue Service approximately \$6,928.29 in taxes, penalties, and interest for tax year 2001, and, as of July 21, 2003, the debt had not been satisfied (¶ 1.h.); and that she owed her state tax board approximately \$1,657.54 in taxes, penalties, and interest for tax years 1988, 1989, and 1990, and, as of July 21, 2003, the debt had not been satisfied.(¶ 1.i.). An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

Applicant admitted the financial obligations identified in allegations at ¶¶ 1.a. through 1.i. of the SOR. The Government has established, through the FORM and Applicant's admissions, a *prima facie* case that Applicant is financially overextended. Applicant provided no persuasive evidence to rebut the financial concerns specified in the SOR and identified as disqualifying conditions under ¶¶ E2.A6.1.2.1., E.2.A6.1.2.2, and E2.A6.1.2.3. of Guideline F.

We turn to a review of the several conditions that could mitigate the security concerns raised by Applicant's financial delinquencies. Applicant's acknowledged delinquencies involve long-standing debts which continue to be unsatisfied to this day. Thus, neither mitigating condition E2.A.6.1.3.1. nor mitigating condition E2.A6.1.3.2. applies. If a person's financial delinquencies were largely caused by conditions beyond his or her control, then mitigating condition E2.A6.1.3.3 might apply. Applicant provide no evidence that her financial delinquencies resulted from circumstances beyond her control. Thus, mitigating condition E2.A6.1.3.3. does not apply.

In a signed, sworn statement witnessed by a special agent of the Defense Security Service on February 13, 2002, Applicant stated she was, at that time, making an offer of compromise to the Internal Revenue Service to pay a portion of the taxes, penalties, and interest she owed. (Item 6.) In a signed, sworn statement witnessed by a special agent of the Defense Security Service on July 16, 2003, Applicant stated she had not had further contact with the Internal Revenue Service after February 2002. (Item 8.) The record establishes that Applicant sought legal assistance and counsel regarding her federal tax liabilities in 2004 and she is now committed to a monthly payment plan of \$550. Applicant has sought counseling, albeit belated, for her delinquent tax problem, and thus mitigating condition E2.A6.1.3.4 applies. While she has recently established a payment plan to satisfy her federal tax obligations, it is too soon to tell if Applicant

will follow through on her payment plan and whether it represents a good faith effort to pay her debts and to resolve her financial delinquencies and bring them under control. Thus, mitigating condition E2.A6.1.3.6. does not apply to the facts of Applicant's case. Accordingly, the allegations in ¶¶ 1.a. through 1.i. of the SOR are concluded against the Applicant.

Guideline E - Personal Conduct

In the SOR, DOHA alleged Applicant deliberately failed to disclose in response to Question 36 on her SF-86 that she had a tax lien placed against her by her county treasurer and tax collector on March 18, 1997 for \$285.31 (¶ 2.a.(1)); that she had a tax lien placed against her by her county treasurer and tax collector on March 19, 1997 for \$615.20 (¶ 2.a.(2)); that she had a tax lien placed against her by her county treasurer and tax collector on December 2, 1997 for \$515.83 (¶ 2.a.(3)); that she had a tax lien placed against her by her county treasurer and tax collector on December 7, 1998 for \$522.03 (¶ 2.a.(4)); and that she had a tax lien placed against her by her county treasurer and tax collector on October 20, 1999 for \$509 (¶ 2.a.(5)). DOHA also alleged Applicant deliberately failed to disclose in response to Question 36 the federal tax liens alleged in subparagraphs 1.a. through 1.f. of the SOR. (¶ 2.a.(6)).

Applicant admitted all the falsification allegations in the SOR. Her deliberate misrepresentations cause serious security concerns. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant's responsibility to provide truthful and complete responses to questions on his or her SF-86 cannot be set aside or ignored. An applicant's financial history is material to a determination of his or her security worthiness. With respect to the Guideline E conduct alleged in SOR subparagraphs 2.a.(1) through 2.a.(6), Applicant falsified her SF-86 by omitting and concealing relevant and material information about tax liens placed against her property for failure to pay taxes. Applicant's failure to answer Question 36 on her SF-86 truthfully and completely brings her conduct under disqualifying condition E2.A5.1.2.2. The information Applicant withheld from her answer to Question 36 was pertinent to a determination of her judgment, trustworthiness, and reliability. Thus, mitigating condition E2.A5.1.3.1 does not apply. She did not make a prompt, good-faith effort to correct the falsification before being confronted with the facts, and thus mitigating condition E2.A5.1.3.3. does not apply. Applicant's falsifications were recent and not isolated incidents, and she did not supply the correct information voluntarily. Thus mitigating condition E2.A5.1.3.2. does not apply. Her refusal to supply correct information on her indebtedness on her SF-86 was not based on advice from legal counsel, and thus mitigating condition E2.A5.1.3.6. is inapplicable.

Applicant's deliberate concealment of her financial delinquencies increased her vulnerability to coercion, exploitation, or duress, and thus disqualifying condition E2.A5.1.2.4. applies. Applicant's recently adopted plan to pay her federal tax liens is a positive step, and, as she carries out her plan, it will, over time, reduce or eliminate her vulnerability to coercion, exploitation, or duress. Thus, mitigating condition E2.A5.1.3.5. applies in part.

A person's refusal to provide relevant and material information to the Government provides a rational basis for denial or revocation of access to classified information for that person. ISCR Case No. 98-0445 at 3 (App. Bd. April 2, 1999), (quoting *Gayer v. Schlesinger*, 490 F. 2d 740, 754 (D.C. Cir. 1973); *Clifford v. Shultz*, 413 F. 2d 868 (9th Cir. 1969), *cert. denied*, 396 U.S. 962 (1969)).

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Accordingly, the allegations in subparagraphs 2.a.(1) through 2.a.(6) of the SOR are concluded against the Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.(1): Against Applicant

Subparagraph 2.a.(2): Against Applicant

Subparagraph 2.a.(3): Against Applicant

Subparagraph 2.a.(4): Against Applicant

Subparagraph 2.a.(5): Against Applicant

Subparagraph 2.a.(6): Against Applicant

DECISION

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

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.