

DATE: August 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32292

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 49 years old and a supervisor who has been employed with the same company since 1988. Applicant was married from 1996 to 1998 and incurred some marital debts. Applicant has a 1993 unpaid state tax lien, five years of unpaid federal taxes, and numerous delinquent debts. Applicant failed to provide any mitigation for why he has not paid his debts. Applicant failed to list his tax lien and overdue debts on his security clearance application. Applicant failed to provide any mitigation as to why he lied on his security clearance application. Clearance is denied.

STATEMENT OF CASE

On January 9, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, financial considerations, and Guideline E, personal conduct concerns.

In a sworn statement dated April 13, 2005 Applicant responded to the SOR allegations. In his response to the SOR allegations, Applicant admitted all the allegations under Guideline F and Guideline E. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on May 12, 2005. Department Counsel moved to amend the SOR to clarify the name of a creditor in subparagraph 1.1 of the SOR and requested Applicant to file any objection to the amendment and respond to the modified allegation. The FORM was mailed to Applicant on May 12, 2005 and received on May 20, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object nor did he file any additional evidence to be considered. The case was assigned to me on July 17, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the

pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 49 years old and has worked for the same employer as a supervisor since 1988. Applicant was married from 1996 to 1998 when the marriage ended in divorce. Applicant had some financial setbacks when he went through his divorce and fell behind in some of his payments to creditors. Applicant's wife at the time was using credit cards to make purchases and Applicant thought she was using cash.

Applicant is indebted to his resident state for personal income taxes for tax years 1992, 1993, 1997, 2000, and 2001 as alleged in SOR 1.a. Tax liens were filed in circuit court by Applicant's resident state for 1992, 1997, and 2000. The lien's total is \$7,038.49. ⁽²⁾ Applicant admitted he has a tax lien from his state. ⁽³⁾ On Applicant's financial statement he does not list his tax lien as a debt,

nor is there any indication he is making any payments towards this debt. ⁽⁴⁾ Applicant also shows that at the end of each month he has \$114.00 in excess, after paying his monthly bills. ⁽⁵⁾

Applicant failed to file a personal income tax return in his resident state for 1994, as alleged in SOR 1.b. Applicant provided no explanation on why he failed to file his tax return. Applicant is indebted to the Internal Revenue Service for federal personal income taxes as alleged in SOR 1.c. as follows:

Tax year 2002-\$222.28

Tax year 2001-\$2,172.12

Tax year 2000-\$3,620.90

Tax year 1998-\$4,908.52

Tax year 1997-\$10,894.27

Applicant did not provide any information on why he failed to pay his taxes. Applicant noted in his answer to allegation subparagraph 1.c of the SOR that he is under a payment plan as of November 12, 2003 and pays \$21.00 per creditor. ⁽⁶⁾ Applicant has not provided any documentation to show he is current on his payments or has reduced his federal income tax debt in anyway.

Applicant admits he is indebted as alleged in SOR subparagraphs 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l. In his May 6, 2002 sworn statement ⁽⁷⁾ Applicant acknowledged five debts and listed them on his financial statement. He stated "I plan to pay these accounts off as soon as I can one by one. When I do have money at the end of a pay period, I do make payments with the above companies, but currently I have not had the funds to make any payments." ⁽⁸⁾ Those debts are listed in subparagraphs 1.g., 1.h., 1.i., 1.j. and 1.k. The total of those debts in 2002 was \$5,074.00. Those debts have now increased to \$7,227.00. Applicant has not provided any evidence or documents to show he has made any payments on these debts. Applicant has also accumulated additional debts totaling \$1,799.00. Applicant has not provided any information or documents to show he is making payments on any of these debts or that he has contacted the creditors to work out payment plans. Applicant's delinquent debts, including his unpaid taxes, liens, and delinquent debts is approximately is \$37,330.00.

Applicant answered "No" to Question 36 on his security clearance application (SF 86) (*Your Financial Record-Tax Lien: In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?*) Applicant signed his SF 86 on March 7, 2001. Applicant admits in his May 6, 2002 statement that he had a tax lien for his 1993 taxes. Applicant also had a

1998 tax lien when he answered this question. Applicant provides no explanation for why he provided a false answer to this question.

Applicant answered "No" to Question 38 (*Your Financial Delinquencies-180 Days: In the last 7 years, have you been*

over 180 days delinquent on any debt(s)?) Applicant was aware he had past debts that were more than 180 days overdue.

Applicant answered "No" to Question 39 (*Your Financial Delinquencies-90 Days: Are you currently over 90 days delinquent on any deb(s)?*) Applicant was aware he had debts that were more than 90 days delinquent. Applicant's only comment regarding the fact he answered "No" to these three questions was "I admit, I did the best that I could."⁽⁹⁾ It is unclear what he means by this statement.

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, person 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 determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁰⁾ The government has the burden of proving controverted facts.⁽¹¹⁾ The burden of proof is something less than a preponderance of evidence.⁽¹²⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹³⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁴⁾

No one has a right to a security clearance⁽¹⁵⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁶⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁷⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁸⁾ 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 find the following adjudicative guideline 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 or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that 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 guideline 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 prima facie case for disqualification under Guideline F and Guideline E.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*), FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*), apply in this case. Applicant has approximately \$37,330.00 in tax liens, unpaid federal income taxes and delinquent debts that date back as far as 1993. He has not paid these debts or made an attempt to resolve them. Applicant has \$114.00 of excess income at the end of each month. Considering the large amount Applicant owes and the small amount of income he has left over at the end of the month, I find Applicant is unable to satisfy his debts. I also find that Applicant's total disregard for paying any amount on his debts or negotiating payment plans show he is also unwilling to resolve his debts. Applicant has an eighteen year history of not meeting his financial obligations.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC E2.A6.1.3.1 (*The behavior was not recent*), FC C E2.A6.1.3.3 (*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)*), FC MC E2.A6.1.3.4 (*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*), and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant had some debts when he and his wife divorced in 1998. Applicant did not provide any information as to what the debts were or if any of his delinquent debts listed in the SOR were from his marriage. It has been seven years since Applicant's divorce, a sufficient amount of time to establish a plan and begin to resolve any financial issues that resulted from the demise of his marriage. Applicant has a tax lien for unpaid taxes from 1993, eighteen years ago. Applicant's unpaid federal taxes owed to the IRS are for five separate years. Applicant has not paid his unpaid state or federal taxes and these debts are current. Applicant failed to pay his other delinquent debts, some of which he promised to pay in 2002. I find FC MC E2.A6.1.3.1 does not apply because all of the debts are still owed and therefore recent. I find E2.A6.1.2.3 does not apply because although Applicant may have had financial difficulties after his divorce, he has had seven years to resolve them and has not. I find FC MC E2.A6.1.4 does not apply because Applicant has not provided any information that he is seeking any type of assistance or financial counseling to help him resolve his debts. FC MC E2.A6.1.3.6 does not apply because Applicant has not made a good faith effort to pay his creditors or resolve his debts. Despite Applicant's assurances that he would pay his debts he has not provided any evidence that he made any payments to any of them.

Based on all the evidence, Personal Conduct Disqualifying Condition (PE 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 PE DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) apply in this case. Applicant falsely answered "No" to questions on his SF 86. Applicant knew his answers were false when he filled out his SF 86. He was fully aware of his tax liens and his

overdue debts past 180 and 90 days. His statement of May 6, 2002 confirms he was aware of his past debts and his 1993 tax lien. He provided no explanation for his falsification.

I have considered all the mitigating conditions and especially considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2 (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). Applicant did not provide any information that he voluntarily divulged the abovementioned information. He admitted to the falsification.

Applicant did not provide any information that he has taken any positive steps to eliminate his vulnerability to coercion, exploitation, or duress. I find PC MC E2.A5.1.3.2 , PC MC E2.A5.1.3.3 and PC MC E2.A5.1.3.5 do not apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concerns raised by the financial consideration and personal conduct concerns. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline F and Guideline E are 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 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

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Paragraph 2 Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. 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 Applicant. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Items 7, 8, 9.
3. Item 3.
4. Item 5.
5. *Id.*
6. Item 3.
7. Item 5.
8. *Id.* at 2.
9. Item 3.
10. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
11. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
12. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
13. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.
14. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15
15. *Egan*, 484 U.S. at 531.
16. *Id.*
17. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
18. Executive Order 10865 § 7.