

KEYWORD: Financial

DIGEST: Applicant accumulated over \$158,000.00 in federal tax debt over a six-year period spanning 1993 through 1995 when he failed to file federal tax returns and prompted the IRS to file tax liens against his wife and himself. Applicant also accrued delinquent consumer and medically-related debts over this time frame, which he has failed to address, despite apparent adequate resources to do so. Despite a pending application for a home equity loan to raise cash to address his delinquent debts, it is uncertain whether he will be able to obtain the loan, or how he will choose to apply any awarded loan proceeds. Applicant's repayment efforts are too uncertain to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to extenuate or mitigate security concerns associated with his delinquent debts. Clearance is denied.

CASENO: 02-32842.h1

DATE: 08/05/2004

DATE: August 5, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32842

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Samuel G. Hayward, Esq.

SYNOPSIS

Applicant accumulated over \$158,000.00 in federal tax debt over a six-year period spanning 1993 through 1995 when he failed to file federal tax returns and prompted the IRS to file tax liens against his wife and himself. Applicant also accrued delinquent consumer and medically-related debts over this time frame, which he has failed to address, despite apparent adequate resources to do so. Despite a pending application for a home equity loan to raise cash to address his delinquent debts, it is uncertain whether he will be able to obtain the loan, or how he will choose to apply any awarded loan proceeds. Applicant's repayment efforts are too uncertain to make any safe predictable judgments at this time about his debt resolution prospects. Applicant fails to extenuate or mitigate security concerns associated with his delinquent debts. Clearance is denied.

STATEMENT OF CASE

On November 25, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which 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 clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on November 30, 2003, and requested a hearing. The case was assigned to me on May 10, 2004, and was scheduled for hearing on June 3, 2004. A hearing was convened on June 3, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of six exhibits; Applicant relied on three witnesses (including himself) and one exhibit. The transcript (R.T.) of the proceedings was received on June 14, 2004.

PROCEDURAL ISSUES

Before the close of the hearing, Applicant requested that the record be kept open to afford him the opportunity to supplement the record with copies of his filed federal tax returns for tax years 1993 through 1998 and a loan package to provide for the payment of his delinquent debts. There being no objection from the Government, and good cause being shown, Applicant was permitted 14 days to supplement the record. The Government, in turn, was afforded 14 days to respond. Within the time allotted, Applicant provided the following: a USB home lending mortgage information package, a hand-written sheet listing Applicant's debts for tax years 1993 through 1998 ((undated), 1040 tax forms with attachments for tax years 1993 through 1998 (signed June 6, 2004 by Applicant's accountant), and a power of attorney form, dated August 19, 1998. Applicant's post hearing submissions are admitted as exhibits B through D, respectively, without objection.

SUMMARY OF PLEADINGS

Under Guideline F, Applicant is alleged to have incurred nine delinquent debts totaling in excess of \$160,000.00 that were not been resolved by May 2003.

For his answer to the SOR, Applicant denied most of the allegations, admitting only his alleged debt to creditor 1.f. In explanation, he disclaimed the accuracy of the alleged federal tax indebtedness without providing a corrected amount. One of the debts he acknowledged as his own; another he claimed was a phone bill for services run up on a stolen calling card; and he disclaimed the balance.

FINDINGS OF FACT

Applicant is a 63-year-old self-employed truck operator who provides trucking services of classified materials for a defense agency and seeks a security clearance.

Applicant and his wife (W) operated a small trucking business between 1987 and 1998, apparently unincorporated. He

and his wife are independent contractors who lease their trucks from a large interstate trucking business (R.T., at 25). During this period Applicant failed to file federal income tax returns: specifically, for tax years 1993 through 1998 (*see* exs. 2 and B; R.T., at 45-46, 156-57). Although he met with his tax preparer in 1995 and provided the preparer certain tax information, the preparer (Mr. C) never filed federal returns in behalf of W and himself in a timely way for tax years 1993 through 1998.

Sometime after 1998, the IRS conducted an audit of Applicant and his trucking business and attributed income to the business that Applicant had been treating as expenses. Altogether, the IRS attributed income to Applicant for the tax years 1993 through 1998 of \$158,472.62 and filed a tax lien against him for this amount in May 2001 (*see* ex. 6). A separate tax lien of \$143,518.43, inclusive of accumulated interest and penalties was filed against W in May 2001 (*see* ex. 5). Applicant cannot account for why the IRS filed separate tax liens against W and himself since they operated their truck together and always filed jointly (R.T., at 38-39). Applicant's tax liability exposure is currently in excess of \$750,000.00, which Applicant's tax preparer cannot completely rule out based on the records provided him by Applicant and W.

Besides incurring delinquent federal tax debts, Applicant also accumulated several other debts during this period that he did not discharge, as of May 2003. Some of these debts are reflected in Applicant's September 2002 credit report; some are not. They are reflected in listed creditors 1.b through 1.i and mostly reflect bills for medical services in behalf of their daughter who has a history of medical problems that culminated in brain seizures. While Applicant claims his medical debts should have been paid by his medical insurance carrier, he provides no documentation. Absent documentary proof of some kind, the debts are attributed to him.

Applicant assured the DSS agent (Agent A) who conducted his September 2002 DSS interview that he was in contact with his tax preparer (Mr. C) who was working to refile his federal tax returns for the 1993-1998 tax years to clear up any claimed outstanding balances. What he did not disclose to Agent A at that time was his previous failure to file any federal tax returns for the 1993 - 1998 tax years (*see* ex. 2).

Since the close of the hearing, Applicant is able to document his preparation and filing of his federal income tax returns for the tax years of 1993 through 1998 (ex. D). Because of the lateness of the returns, Applicant's tax preparer cannot rule out IRS audits of the returns (R.T., at 70-71). Applicant also provides proof of his application for a home loan mortgage, which he filed in June 2004 following the hearing (*see* ex. D). He provides no information as to whether or not his loan request was granted. At the very most, Applicant can be credited for exploring loans to address his unpaid creditors.

Unless satisfied, Applicant expects the IRS's tax liens against W and himself to remain in force for ten years before being stricken from the local real estate records. Applicant's tax preparer cannot be certain whether the tax liens in place will be released or subordinated to accommodate Applicant's intended home equity loan (R.T., at 74-75). Despite assurances to address their debts (*see* exs. 2 and 3), to date, neither Applicant nor W has satisfied any of the debts covered by the federal tax liens recorded against their respective interests, or any of the other listed debts.

Applicant's most recent personal financial statement of September 2002 reports a net monthly remainder of \$646.00 for Applicant (*see ex. 2*). Last year he and W grossed in excess of \$90,000.00, which netted him and his wife a monthly average of approximately \$1,831.00 (*see ex. 3; R.T., at 26-27*). Since the hearing, he has applied for a \$125,000.00 loan equity loan to pay down his debts. It is unclear at this juncture in the proceedings whether he obtained such a loan.

Applicant is highly regarded by associates and colleagues of his as a person of honest and trustworthy character. Friends and close acquaintances of Applicant and his spouse for many years credit with him with character traits of honesty, reliability and trustworthiness (*see ex. A*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions

MC 6. The individual initiated good-faith efforts to repay overdue creditors or otherwise resolve debts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the SOR and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

CONCLUSION

Applicant and his spouse accrued considerable delinquent tax and other debt (mostly medically-related) between 1993

and 1998. Applicant's tax debts emanated from tax liabilities generated by the IRS in the absence of any federal tax returns filed by Applicant during these inclusive years. Altogether, Applicant and his spouse accumulated tax debts in excess of \$158,000.00, which the IRS filed federal tax liens in May 2001 against both Applicant and his spouse as tax enforcement measures. To date, none of the tax-related or other debts listed in the SOR have been satisfied by Applicant. The Government's security concerns center on the amount of delinquent debt he compiled between 1993 and 1998, which he has been unable to repay.

Despite prior IRS attempts to fix his tax obligations and take lien enforcement action against him, Applicant remains obligated to both the IRS and his other listed creditors for the full amount of the listed debts (in excess of \$158,000.00 at this time). He remains exposed to potential federal tax liability exceeding \$750,000.00. On this record, two of the Disqualifying Conditions (DC) of the Adjudicative Guidelines for financial considerations apply: DC 1 (history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts).

While Applicant's accrued debts are accompanied by some extenuating circumstances (*viz.*, high expenses associated with his self-employed truck operations and unanticipated medical debts), for the most part, his finances have permitted modest attempts to address not only his anticipated federal tax liabilities years earlier, but his non-insurance covered medical debts as well. His repayment efforts today hinge on whether or not he is successful in obtaining his needed home equity loan.

Applicant's debts are neither extenuated nor mitigated enough to enable him to take advantage of any of the mitigating conditions at this time. His combined income is sufficient to enable him to address his old debts, either directly or through arranged financing. Extenuation is not demonstrated sufficiently to invoke C 3 (conditions largely beyond the person's control) of the Guideline. While he has apparently filed his back tax returns and applied for a home equity loan to address his debts, his overall repayment efforts remain a work in progress and insufficient at this time to invoke any of the mitigating conditions of the Guidelines, primarily MC 6 (initiated good-faith effort to repay overdue creditors) based on his repayment efforts. The Appeal Board has counseled against according much weight to belated efforts to address delinquent debts well after the security clearance process has been initiated. *See* ISCR Case No. 02-33581 (July 20, 2004).

Taking into account all of the circumstances of Applicant's accumulated debts (especially his major federal tax debts), the absence of sufficient attention he has shown with his debts in the past, and the still uncertain results associated with his recent efforts of applying for a home equity loan to address his old debts, unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.i of the allegations governed by the Adjudicative Guidelines pertinent to Guideline F.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE F (FINANCIAL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge