

DATE: March 28, 2005

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 03-02727

## DECISION OF ADMINISTRATIVE JUDGE

**ELIZABETH M. MATCHINSKI**

### APPEARANCES

#### FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant did not timely pay local real estate taxes assessed for fiscal years 1989 to 2004 on an undeveloped parcel of land purchased with two business associates in 1986. Applicant had a responsibility to pay the taxes notwithstanding his failure to receive any financial contributions from his associates. The financial considerations concerns are mitigated by his satisfaction in August 2004 of the tax indebtedness, and his responsible handling of his other financial obligations. Clearance is granted.

### STATEMENT OF THE CASE

On March 5, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on financial considerations (Guideline F).

On April 9, 2004, Applicant filed his response to the SOR allegation and requested a hearing. The case was assigned to me on July 23, 2004, and pursuant to notice of that date, a hearing was held on August 12, 2004. At the hearing, four government exhibits were admitted and Applicant testified, as reflected in a transcript received on September 7, 2004.

Applicant was granted leave until August 30, 2004, to submit documentation for inclusion in the record, not limited to the real estate taxes at issue. On August 27, 2004, Applicant submitted by facsimile the real estate tax bill for fiscal year 2004 (Ex. A), receipt and cancelled check showing payment in full of real estate taxes owed on the property (Ex. B), the deed for the property (Ex. C), awards/commendations at work (Exs. D-G), and recognition from the town's softball league for his outstanding support (Ex. H). With no objection forthcoming from the government by the due date, the documents were marked and admitted as noted.

### FINDINGS OF FACT

The government alleged as security disqualifying that Applicant owes between \$8,000 and \$9,000 in local real estate taxes (including penalties and interest) for tax years 1989 to at least 2001, and that he did not intend to satisfy the debt. In his Answer, Applicant explained that he and two associates had purchased an undeveloped parcel for investment purposes in 1985/86 at a cost of \$18,000. When they were unable to secure a building permit for the property, the others lost interest. Applicant maintained the tax payments thereafter with only minimal financial assistance from one of his two associates, but he stopped all payments on the taxes in 1989 when he could no longer count on funds from this business partner. He explained he was awaiting a decision from this associate as to whether to develop the land. After a complete and thorough review of the evidence, I make the following findings of fact:

Applicant is a 49-year-old member of the administrative staff at a university affiliated research and development laboratory. A direct hire there since October 1983, Applicant seeks to retain the secret-level security clearance that he has held for the past 21 years.

In January 1986, Applicant and two associates (Mr. X and Mr. Y) purchased an undeveloped parcel of land 34,400 square feet in size. (2) The property was conveyed to them in the name of the small mobile home resale company owned by Mr. X, doing business as a realty corporation with Applicant and his associates as its officers. Applicant was listed as a vice president, and with the others was a signatory on a construction mortgage, although no formal articles of incorporation had been filed for the business enterprise. Purchase of the property by Applicant and his associates was contingent on their obtaining a building permit for the construction of a single family home. While their building plans were initially approved, the town's building department later denied the permit. Unable to act on their plans, Applicant's two associates subsequently left the area with no formal business partnership having been filed with the state. As the only owner still living in the area, Applicant received the real estate tax assessments for the undeveloped parcel.

With limited financial contributions from Mr. Y, Applicant continued to pay the local real estate taxes on the property until 1989 when he received no financial assistance from Mr. Y. Applicant did not pay the real estate taxes from 1989 on, as he did not want this financial burden to affect his family. He mistakenly assumed the town would just take over the property for failure to pay the taxes.

In an update of his security clearance, Applicant executed a security clearance application on December 17, 1999. In response to financial delinquencies, Applicant disclosed unpaid real estate taxes since 1989 in the amount of \$8,000 for the undeveloped lot. Applicant was subsequently interviewed by a Defense Security Service (DSS) special agent about the outstanding real estate taxes. Based on his discussion with the agent, Applicant did not understand that the delinquent tax debt could affect his clearance.

On June 1, 2001, the town issued a warrant to Mr. X's company, care of Applicant, to collect unpaid real estate taxes of \$962.94 (including interest and fees) for fiscal year 2000, notifying him that failure to pay the amount due within 30 days could result in foreclosure of title to the property. Applicant did not respond to the warrant.

As of July 2001, Applicant was current in his other financial obligations, although two accounts (an installment loan and his mortgage) were rated as slow pay. He was paying his credit card accounts in accord with the credit terms.

On his receipt of the SOR, Applicant realized that the unpaid taxes on the lot could adversely affect his clearance. For the first time in several years, Applicant contacted Mr. Y in April or May 2004. Applicant expressed to Mr. Y that he would be willing to sign over his ownership interest in the property as long as it would absolve him of any responsibility for the real estate taxes, including a recent assessment of \$842.84 for fiscal year 2004. Unsuccessful in contacting Mr. X, Applicant left it to Mr. Y to contact their other associate.

As of July 2004, Applicant was current in his financial obligations, with the exception of the delinquent real estate taxes on the property co-owned with Messrs. X and Y. His annual salary was between \$68,000 and \$70,000 per year. As of his hearing on August 12, 2004, Applicant expressed his intent to pay the delinquent real estate taxes if he had to, which would require that he take out a home equity loan. By bank check of August 25, 2004, Applicant paid \$14,092.02 to the town, satisfying the delinquent real estate taxes owed on the property co-owned with Messrs. X and Y.

Applicant's work performance has earned him accolades from his government customers. He was recognized with two

program manager awards in 1993. In 1994, his group earned a team award from the same government customer for outstanding effort and dedication in the demonstration, validation, operational testing, and evaluation of an integrated terminal weather system. In October 1995, Applicant was among those company employees recognized for their contributions by another government customer.

Applicant has been active in his local community's youth softball league as well. In June 2002, he was presented an award of appreciation for his outstanding support to the league.

## **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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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.

## **CONCLUSIONS**

Having considered the evidence of record in light of the appropriate legal precepts and adjudicative guidelines, and having assessed the credibility of the Applicant, I conclude the government established its case. Under Guideline F, financial considerations, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting his financial obligations. Directive ¶ E2.A6.1.1. The government must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information. In 1986, Applicant and two business associates, Mr. X and Mr. Y, purchased an undeveloped real estate lot for investment purposes with the intent of building on the land. Although the property was conveyed in the name of Mr. X's company doing business under the realty company of Applicant and his associates, their company was never incorporated. The three business partners were thus jointly and severally liable for the taxes on the land. With limited financial assistance from Mr. Y and none from Mr. X, Applicant paid the local real estate taxes on the property until 1989, when he was forced to cover the taxes himself if he chose to pay them. Not wanting his family to bear this financial burden, Applicant elected not to pay the local real estate taxes assessed for 1989 and subsequent years. As of August 2004, the delinquent tax debt was about \$14,092.02. Applicant's failure to timely pay the tax debt for several years is potentially disqualifying under E2.A6.1.2.1., *A history of not meeting financial obligations*, and E2.A6.1.2.3., *Inability or unwillingness to satisfy debts*, of the financial considerations guideline.

In mitigation, Applicant is to be credited with satisfying the delinquent tax indebtedness in August 2004. Moreover, while it is clear that the SOR provided the impetus for him to address this debt, his demonstrated disregard of this matter is not characteristic of his handling of his financial matters generally. His only delinquent debt of record is the real estate tax obligation that in all fairness should have been borne by all three owners in equal share. As reflected in his July 2004 credit report, Applicant has been responsible in paying his consumer credit accounts. Mitigating condition E2.A6.1.3.6., *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*, applies.

Security clearance determinations involve a careful weighing of a number of variables known as the whole person concept. Among those variables is the presence or absence of rehabilitation and other pertinent behavioral changes. (*See*

E2.2.1.6.) As long as he remains an owner of the land, Applicant may well find himself in the situation of having to pay the entire local real estate tax assessment for fiscal year 2005 and subsequent years. There is very little risk, if any, that he will jeopardize the job that he has held for more than 20 years by failing to timely attend to his legal obligations concerning this property in the future, which include payment of any real estate taxes. SOR subparagraph 1.a. is resolved in his favor.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline F: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Applicant testified the property cost them about \$20,000. Exhibit C reflects the conveyance of property in the name of Mr. X's company d/b/a the realty enterprise engaged in by Applicant and his two associates. The purchase price was \$31,000 and the lots conveyed bear a different street address than that on the town's tax bill (*see* Ex. 2, Ex. A, and Ex. B). Since Ex. C was submitted after the hearing, there was no opportunity to address the discrepancy. There is no evidence that Applicant purchased more than one parcel with Messrs. X and Y.