

DATE: February 4, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04779

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial difficulties. The Internal Revenue Service (IRS) filed tax liens against her for five tax years, totaling \$43,670.36. Applicant resolved \$38,676.36 of her IRS tax liability by allowing the statute of limitations to toll. She also has state tax liens against her for three tax years totaling \$15,665.70. As of 2002, she owed four creditors \$11,565.15. Applicant has made recent and significant progress in achieving financial rehabilitation. Although this recent turnaround is commendable, additional time is required to further assess her commitment to remaining financially solvent. 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 October 22, 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations). Applicant answered the SOR in writing on November 3, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on January 29, 2004. On February 25, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered 14 documents, which were admitted without objection as Government Exhibits (GE) 1 through 14. The Applicant offered four documents, which were admitted without objection as Applicant Exhibits (AE) A through D. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant timely submitted two additional documents, which were admitted without objection as AE E and F. DOHA received the transcript on March 12, 2004.

FINDINGS OF FACT

Applicant is a 48-year-old unmarried woman, who is president and part-owner of a business desiring to conduct

business with the government as a defense contractor. She has held this position since October 2000. Given her current position, she requires a security clearance to participate in certain government contracts. She has two adult daughters.

On March 6, 1996, the Internal Revenue Service (IRS) filed a Notice of Federal Tax Lien against Applicant for unpaid taxes in various amounts for four tax years (SOR ¶¶ 1.1. through 1.d). The tax years and respective amounts are as follows: 1988: \$31,563.51, 1990: \$5,122.71, 1991: \$1,990.21, and 1992: \$348.96. GE 9.

According to her accountant and tax preparer, had Applicant correctly completed her tax returns, she would not have owed any tax. Tr. 25-27, 39-40. Applicant filed the above returns on the following dates: tax year 1988: November 15, 1993, tax year: 1990: November 29, 1993, tax year 1991: December 6, 1998, tax year 1992: June 7, 1993. AE W, AE Y, AE Z, AE AA.

On January 11, 2004, the IRS issued Applicant a Certificate of Release of Federal Tax Lien for taxes owed for tax years 1988, 1990, 1991, and 1992. AE A. Debts to the IRS for tax years 1998, 1990, and 1991 expired due to tolling of the statute of limitations. Applicant settled her debt to the IRS for tax year 1992 for \$498.00. Tr. 22-24.

On January 10, 1997, the IRS filed a Notice of Federal Tax Lien against Applicant for unpaid taxes for tax year 1993 in the amount of \$4,644.97 (SOR ¶ 1.e.). GE 8. On December 17, 2003, the IRS issued Applicant a Certificate of Release of Federal Tax Lien for taxes owed for tax year 1993. AE D. On December 3, 2003, Applicant paid the entire amount due for tax year 1993, which included interest and penalties in the amount of \$7,698.08. AE F. Tr. 27-29.

On November 22, 1996, the Franchise Tax Board of State A filed a Notice of State Tax Lien against Applicant in the amount \$13,638.69 for tax year 1994. GE 7. On December 5, 2002, Applicant settled this debt for \$3,954.90. Answer to SOR. On December 20, 2002, the Franchise Tax Board of State A filed a Release of Lien for taxes owed for tax year 1994. Answer to SOR. AE G. Tr. 30-34.

On October 19, 1998, Franchise Tax Board of State A filed a Notice of State Tax Lien against Applicant in the amount of \$2,027.01 for tax year 1995 (SOR ¶ 1.g.). GE 5. On January 10, 2003, Applicant disputed this tax lien as being in error. Answer to SOR. At some point after that, the lien was removed from Applicant's credit report (credit report dated October 13, 2003). Answer to SOR. Tr. 34-36.

Applicant is current and in compliance with her federal and state taxes. AE B. Tr. 43-44.

SOR ¶ 1.h. alleges Applicant was indebted to a tax attorney for \$1,750.00, for a delinquent account referred to a collection agency around November 1996. Evidence submitted by the government substantiates Applicant was indebted to the tax attorney for \$1,144.00 as of September 13, 2002. The account was referred to a collection agency as a bad debt. GE 4, p. 6.

Applicant disputed this debt because "the man did not earn his money, and I did pay him most of the money . . . It was not paid in full. It fell off of my credit report." Tr. 66. This debt no longer appears on Applicant's credit report. Answer to SOR. GE 11.

SOR ¶¶ 1.i. and 1.j. allege Applicant was indebted to a collection agency and credit card company for \$2,768.00 and \$3,646.00, respectively. The first debt was for medical care provided to Applicant after an automobile accident. This bill was referred to a collection agency. Applicant disputed this debt, however, she has since paid this account in full. Answer to SOR. Tr. 68-69. The second debt to a credit card company has been paid in full. Answer to SOR. AE I through O. Tr. 50-53.

SOR ¶ 1.k. alleges a judgment in favor of a consulting firm was entered against Applicant for \$3,400.00 in May 2002. Applicant disputed this debt and states she was not aware a judgment had been entered against her. She ultimately submitted a check to the consulting firm, however, in the interim, she was informed by her bank that her account had been levied to satisfy the judgment. Applicant stopped payment on the check to the consulting firm since they had recouped their funds through judgment and levy against Applicant's bank account. The debt to this creditor has been satisfied. Answer to SOR. Tr. 69-71.

Applicant attributes her failure to timely file her income tax returns in large part to the breakup with her youngest daughter's father (ex-boyfriend), challenges associated with selling her ex-boyfriend's business, and her ex-boyfriend's unwillingness or failure to provide her with the necessary documentation to file her income tax returns. Tr. 73. Referring to separating from her ex-boyfriend, "That was the big reason for the split up, because he did not want to sell off the business or take any of the profits from that business to pay off the tax liens. That was not the only reason, but it was one of the big reasons." Tr. 101. Applicant further testified she fell behind on her taxes and became "overwhelmed" and had numerous other bills to contend with. Tr. 78-83.

Applicant describes herself: "I am not a real detailed person, and I am a marketer, and I am more of a project manager in some respects, and I keep everything, but I don't keep records in a very good manner. And so finances have to be handled in that manner. And I knew that I was really lax in that, and that I have never been very good at it, or I obviously would not have gotten in this problem to begin with . . ." Tr. 94-95.

Applicant's company is successful and solvent. AE H. Furthermore, she is current on her bills and her credit is on the mend. Answer to SOR, Tr. 96. She has taken precautions to prevent falling behind on her taxes in the future. Tr. 93.

Applicant is well regarded by her fellow employees. She further provided letters of reference from business associates and her landlord attesting to her integrity and good character. AE Q through S.

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

Guideline F- Financial Considerations

In the SOR, DOHA alleged Applicant was indebted to the IRS for back taxes for years 1988, 1990, 1991, 1992, and 1993 (¶¶ 1.a. through 1.e.) totaling \$43,670.36, was indebted to Franchise Tax Board of State A for back taxes for years 1994 and 1995 (¶¶ 1.f. and 1.g.) totaling \$15,665.70, and four additional debts to two collection agencies, a consulting company, and a credit card company (¶¶ 1.h. through 1.k.) totaling \$11,564.15. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and, in part, Applicant's admissions SOR allegations ¶¶ 1.a. through 1.k., except for the allegation contained in ¶ 1.h. In ¶ 1.h., the supporting evidence indicated Applicant was indebted to a collection agency for \$1,144.00 versus \$1,750.00.

The debts alleged in ¶¶ 1.a. through 1.e. were back taxes owed by Applicant to the IRS as a result of her failure to timely and properly file her federal income tax returns for tax years 1988, 1990, 1991, 1992, and 1993. Applicant resolved her debt to the IRS for tax years 1988, 1990 and 1991 by tolling the statute of limitations, representing a loss to

the government of \$38,676.43. Applicant resolved her debt to the IRS for tax years 1992 and 1993 by paying the amounts due plus interest and penalties. Applicant did not file her income tax returns for any of the five years above until various dates in 1993. It was not until 2004, that the IRS issued Applicant a release for tax years 1988, 1990, 1991, and 1992. In 2003, the IRS issued Applicant a release for tax year 1993.

On average, it took Applicant approximately ten years to clear up her federal tax problems from start to finish. For three tax years, she paid nothing. While Applicant is to be commended for recently settling her IRS accounts, her conduct of failing to fulfill her obligation of filing *and* paying federal income taxes over a ten year period is of considerable concern. Applicant's explanation of going through a separation and associated difficulties is not sufficient to overcome a ten year gap in resolving this matter. Nor is her explanation that she is not good detail person.

The debts alleged ¶¶ 1.f. and 1.g. were back taxes owed by Applicant to the Franchise Tax Board of State A as a result of her failure to pay state income taxes for 1994 and 1995. Applicant resolved her 1994 tax liability for a lesser amount approximately five years after a state tax lien was filed against her. Applicant successfully disputed her state tax liability for 1995. The above comments pertaining to Applicant's handling of her federal tax debt are applicable to her handling of state taxes except the resolution time was slightly shorter.

The debt alleged in ¶ 1.h. and substantiated for \$1,144.00 appears to have fallen off Applicant's credit report. Absent any evidence, Applicant's claim that the attorney did not earn his money she hired to resolve her tax problems is not persuasive.

The debts alleged in ¶¶ 1.i. through 1.k. have been paid and are resolved.

A predictor of how a person will act in the future is often gauged by how they have acted in the past. The total amount of taxes owed in the late 1980s and early 1990s, and the time taken to resolve them are of significant concern. Particularly troublesome is the fact for three of those years, Applicant resolved her tax liability by allowing the statute of limitations to toll. Applicant does appear to be on a clear path towards financial rehabilitation. However, additional time is required to further assess her commitment to remaining financially solvent.

Guideline F: DC 1: (A history of not meeting financial obligations. E2.A6.1.2.1.); DC 3: (Inability or unwillingness to satisfy debts. E2.A6.1.2.3.) MC 1: (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. E2.A6.1.3.6.) applies. On balance, the disqualifying conditions outweigh the mitigating condition. I conclude Guideline F against Applicant.

The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, as set forth in the directive, to the evidence presented. Under the Applicant's current circumstances a clearance is not warranted, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, she may well demonstrate persuasive evidence of her security worthiness.

In short, enough time has not elapsed to determine that Applicant's recent financial turnaround as compared to years of financial irresponsibility will continue. In reaching my decision, I have considered the evidence as a whole.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.-1.f: Against Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.-1.k: For 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 a security clearance for Applicant. Clearance is denied.

Robert J. Tuidor

Administrative Judge

1. Pursuant to Exec. Or. 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.