

DATE: May 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10004

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

William H. Sams, Esq.

SYNOPSIS

Applicant has been indebted to the IRS for back taxes, penalties and interest for many years. His current IRS debt stands at about \$35,000.00. Although applicant's testimony that he intends to begin making payments to the IRS in the near future was sincere, the evidence does not establish he is in a position to make any meaningful progress toward satisfying this debt anytime soon. Clearance is denied.

STATEMENT OF THE CASE

On November 3, 2004, 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, (as administratively reissued on April 20, 1999), 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 denied or revoked.

Applicant responded to the SOR in writing on December 2, 2004. The case was assigned to me on March 14, 2005. A Notice of Hearing was issued on April 6, 2005, and the hearing was held on May 10, 2005. The transcript was received on May 18, 2005.

FINDINGS OF FACT

Applicant is a 49 year old employee of a defense contractor. He served honorably in the U.S. Navy for over 20 years.

Applicant was indebted to the California Franchise Tax Board (CFTB) for past due taxes, penalties, and interest for at least three different years. ⁽¹⁾ In 1998 and/or 1999, his wages were garnished to satisfy his 1995 and 1996 tax debts totaling about \$1,500.00. In 2002, his wages were garnished to satisfy a 1999 tax debt of about \$3,350.00. At the present time, all of his California tax returns have been filed, and he is current on all of his California income tax obligations.

Applicant has been indebted to the IRS for back taxes, penalties and interest for many years.⁽²⁾ In 1999, he went to an IRS office to try to settle the matter. While there, he (1) filed his past-due Federal income tax returns for tax years 1994 through 1998, and (2) set up a payment plan. He made the \$700.00 monthly payments required by the payment plan for about a year before other, more pressing financial obligations forced him to stop the payments and to put his IRS obligation on the "back burner" (TR at 56-57). Other than having his 2004 Federal income tax refund applied to the debt, applicant has made no payments to the IRS since he stopped making the plan payments in 2000.

Applicant testified that he hired a tax accountant in 2002 to help him with his IRS debt, but in the end the accountant couldn't help so he ended the relationship. In his December 2003 responses to interrogatories propounded to him by DOHA, applicant stated that he intended to contact the IRS within a week to start a new payment plan. Despite this statement, no new payment plan was ever set up. In his December 2004 response to the SOR, he stated, "Recent payment has been made and a letter to the IRS asking them to assist me in setting up another payment plan to allow me to repay my obligation has been sent and I am awaiting a response. In the meantime, my intention is to continue to send money every month until something can be set back up." With respect to his comment that "recent payment has been made," this contradicts his testimony (TR at 65-66) and the other evidence in the record establishing that no payments had been made since 2000. And, since he testified that no voluntary payments have been made since 2000, he obviously did not follow through with his stated intention to "continue to send money every month." At the hearing, applicant testified that he is in the process of setting up a new payment plan with the IRS and is simply waiting for some routing numbers from the IRS so his payments can be taken directly from his military retirement pay. At the present time, his debt to the IRS stands at about \$35,000.00.

Applicant testified that he earns a gross annual salary of almost \$100,000.00 from his employer, and receives about \$1,100.00 net per month from the military. Although in isolation this appears to be a relatively good income, I cannot determine if it is sufficient to meet applicant's expenses since no credible information about his expenses was offered into evidence. If anything, the facts that (1) he has not taken any meaningful action towards satisfying his IRS debt during the past several years, and (2) in 2003/2004, he fell behind on at least four different debt payments, lead me to conclude that applicant is, at best, merely getting by on his two sources of income.⁽³⁾

On a Security Clearance Application (SCA) that he executed on December 5, 2002, applicant lied about his financial history when, in response to both Question 34, which asked, "In the last 7 years, have you had your wages garnished for any reason?" and Question 36, which asked, "In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" he stated "no."

Applicant admits that he intentionally provided a false response to Question 34. He did so because he was embarrassed and didn't want his coworkers to know about his financial problems (TR at 53). With respect to Question 36, applicant has given inconsistent explanations for his "no" response. In his December 2002 response to interrogatories, he stated: "I honestly do not know why I answered that question that way. I may have been thinking about my bankruptcy in 1994 and not had read the question thoroughly. A definite oversight on my part." In his response to the SOR, he stated, "Part of the reason for this [no] answer I may have read it wrong. It stated 'a lien against property.' My answer was in part that I did not think the lien was against any property but against me . . . In the case of 2.a. [Question 34] and 2.b. [Question 36] I see how ridiculous this looks to me now. My fears and embarrassment led me to make a very stupid mistake that I regret." At the hearing, he testified that he believed his "no" response was proper because, although he knew tax liens were filed against him, he interpreted the question to mean a "yes" response was required only if the tax lien(s) were filed against his real or personal property, not against his wages (TR at 54-56). Considering the evidence as a whole, I find that applicant knowingly provided a false response to Question 36.

Four witnesses appeared at the hearing and testified on applicant's behalf. In general, these witnesses testified that applicant is a very reliable individual who handles classified information properly. Letters from three other individuals state essentially the same thing.

CONCLUSIONS

With respect to Guideline F, the evidence establishes that applicant has a history of not meeting his financial

obligations, particularly his income tax obligations. Although he satisfied his California income tax obligations by having his wages garnished, he is still indebted to the IRS in the approximate amount of \$35,000.00. Applicant's failure to honor his financial obligations reflects adversely on his judgment and reliability, and suggests he cannot be relied upon to safeguard classified information. With respect to the Financial Considerations guideline, Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*) and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) are applicable.

Once the Government established a *prima facie* case under Guideline F, the burden shifted to applicant to show he has reformed. Applicant failed to meet his burden. Although his testimony that he is in the process of setting up another payment plan with the IRS seemed sincere, the fact is applicant has not voluntarily paid anything to the IRS since 2000. This fact not only precludes application of Mitigating Conditions E2.A6.1.3.1. and E2.A6.1.3.6, it also raises serious questions about applicant's current financial condition. Additional questions are raised about applicant's financial condition by his inconsistent statements concerning his payments to the IRS. Based on the evidence presented, it is impossible to conclude with any degree of certainty that applicant (1) is in a position to significantly reduce his long-standing IRS debt anytime soon, (2) is not experiencing financial difficulties at the present time, or (3) is unlikely to experience additional financial difficulties. Based on the foregoing, Guideline F is found against applicant.

With respect to Guideline E, the evidence establishes that applicant intentionally provided false, material information to the Government in response to two questions on an SCA he executed in December 2002. This conduct is extremely troubling. The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders. Applicant's intentional falsifications require application of Disqualifying Condition E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . .*). No Mitigating Conditions apply. Based on the foregoing, Guideline E is found against applicant.

FORMAL FINDINGS

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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.

Joseph Testan

Administrative Judge

1. A State tax lien was filed against applicant in 1998 for non-payment of income tax. The lien was released in 2000.
2. A Federal tax lien was filed against applicant in 1999 for non-payment of income tax.
3. Although various credit reports offered into evidence indicate applicant has, for the most part, paid his non-tax bills on time, Exhibit E indicates that in 2003/2004, he fell behind on his payments to at least three creditors involving four different debts.