

DATE: June 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10324

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Alan R. Johns, Esq.

SYNOPSIS

Applicant exercised extremely poor judgment when he decided in the 1980s and early 1990s to opt out of the income tax system. However, based on the passage of time since this conduct occurred (at least ten years), applicant's recognition that he was wrong, his timely compliance with the tax laws since 1994, and the lack of any credible evidence that he is currently experiencing financial difficulties, Guideline F is found for him. Clearance is granted.

STATEMENT OF THE CASE

On November 2, 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, 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 November 24, 2004. A Notice of Hearing was issued on December 29, 2004. The case was reassigned to the undersigned on January 13, 2005. The hearing was held on January 31, 2005. Following the hearing, applicant submitted two sets of documents. The submission dated February 16, 2004, and Department Counsel's letter indicating she has no objection to it (total of 6 pages), were marked as Exhibit B. The submission dated February 28, 2005, and Department Counsel's letter indicating she has no objection to it (total of 4 pages), were marked as Exhibit C. Both exhibits were admitted into evidence. The transcript was received on February 16, 2005.

FINDINGS OF FACT

Applicant is a 50 year old employee of a defense contractor.

Applicant's financial difficulties began in the early 1980s when he was drawn to a tax movement that argued, in essence,

that paying income tax was voluntary. Applicant followed the advice of the movement's advocates and (1) began claiming an improper number of exemptions, which resulted in no income being withheld from his paycheck, and (2) stopped filing Federal income tax returns. Because the "IRS did not bother [him] for the longest time . . . [he] was convinced that [it] worked" (TR at 36). Eventually, the IRS caught up with him. In October 1994, a Federal tax lien was filed against him. This lien, in the amount of \$28,798.68, covered delinquent income tax, penalties, and interest that applicant owed for tax years 1981, 1982, 1986, 1988, and 1989. In addition, the IRS seized about \$30,000.00 of applicant's property.

In 1994, applicant met with an IRS agent and filed his past-due returns. Since then, he has filed all tax returns and paid all income tax that came due. Applicant testified that he does not know if the movement's points about the tax law are correct. In his words, "I don't know what to believe other than I don't want to play that game anymore" (TR at 39). As evidenced by his compliance with the tax laws during the past ten years, applicant now understands that, regardless of what he may personally believe, he is required to pay income tax and file tax returns.

Over the years, applicant's debt to the IRS for past-due taxes, penalties and interest for tax years 1984-1993 continued to grow. In 1999, the IRS filed a new tax lien against applicant. The new lien, in the total amount of \$49,595.71, covered tax years 1984, 1986, 1987, 1989, 1990, 1991, 1992 and 1993. By November 2004, applicant's IRS debt for those tax years had grown to a little over \$100,000.00.

In July 1993, applicant filed a Chapter 7 bankruptcy petition. The main reason for the filing was to have his IRS debt discharged. In December 1993 applicant's petition was dismissed without prejudice.

In March 1994, applicant filed another Chapter 7 bankruptcy petition, again trying to get his tax debt discharged. His effort failed and his petition was dismissed in September 1994.

In July 1997, applicant filed a third Chapter 7 bankruptcy petition. All of applicant's debts, except his IRS debt, were discharged in November 1997.

In August 2004, applicant filed his fourth and final Chapter 7 bankruptcy petition seeking to have his IRS debt discharged. In November 2004, the bankruptcy court discharged all of applicant's debts, including his IRS debt. The IRS filed a Certificate of Release of Federal Tax Lien in February 2005 (Exhibit C).

Applicant is not experiencing any significant financial problems at the present time, and there is no reason to believe he is likely to experience any in the future.

CONCLUSIONS

The evidence establishes that in the early 1980s, applicant bought into the argument that paying income tax was voluntary, and as a result, took steps to take himself out of the income tax system. The evidence further establishes that he did not file income tax returns, or pay any income tax, for many years. These facts require application of Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligations*), and E2.A6.1.2.2 (*income tax evasion*) of the Financial Considerations guideline.

In 1994, applicant met reality. The IRS went after him by seizing his assets and filing tax liens against him. He soon realized that, despite his beliefs, he could not opt out of the income tax system. He responded to this realization by filing his past-due tax returns, and since 1994, by complying with the tax laws by filing his income tax returns and paying his yearly income tax.

Until very recently, applicant owed the IRS a little over \$100,000.00 in back taxes, penalties and interest for numerous tax years prior to 1994. In late 2004, this tax obligation was discharged by a bankruptcy court. Although applicant's tax debt existed until very recently, the poor judgment and irresponsible conduct which got him into the tax (and financial) trouble occurred ten years ago. Accordingly, Mitigating Condition E2.A6.1.3.1 (*the behavior was not recent*) is applicable.

Applicant's current financial condition is not a security concern. At the present time, he is financially stable, and there is

no reason to believe he is unlikely to remain that way. His decision to exempt himself from paying income tax for several years prior to 1994 is the security concern. This decision was completely irresponsible, and the judgment he used to reach it could not have been poorer. Had this conduct occurred more recently, he would not be eligible for a security clearance. However, as noted above, this conduct occurred ten years ago. Since then, applicant has complied with the tax laws. Although applicant's irresponsible conduct is certainly not condoned, based on the passage of time since it occurred, the fact that applicant has learned from his mistake, and the fact he is not experiencing any financial difficulties at the present time, Guideline F is found for him.

With respect to Guideline E, there is no question that applicant's conduct involved questionable judgment. However, given the passage of time since the questionable judgment occurred, the fact that he learned from it, and the lack of any evidence of other questionable judgment, Guideline E is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: 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.

Joseph Testan

Administrative Judge