

KEYWORD: Financial

DIGEST: Applicant has a history of financial irresponsibility that includes two Chapter 7 bankruptcy discharges, the last occurring in October 2004, and federal and state tax liens totaling more than \$86,000.00. The tax deficiencies resulted in large part from Applicant's decision to have his tax withholdings reduced by greatly exaggerating the number of dependents he was entitled to claim. Although he now appears to have resolved most of his financial problems, his conduct is inconsistent with the character that must be demanded of one who is to be entrusted with the nation's secrets. Applicant has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

CASENO: 03-13768.h1

DATE: 01/25/2005

DATE: January 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13768

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial irresponsibility that includes two Chapter 7 bankruptcy discharges, the last occurring in October 2004, and federal and state tax liens totaling more than \$86,000.00. The tax deficiencies resulted in large part from Applicant's decision to have his tax withholdings reduced by greatly exaggerating the number of dependents he was entitled to claim. Although he now appears to have resolved most of his financial problems, his conduct is inconsistent with the character that must be demanded of one who is to be entrusted with the nation's secrets. Applicant has failed to mitigate the security concerns caused by the financial considerations present in this case. Clearance is denied.

STATEMENT OF THE CASE

On July 2, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline F for financial considerations. Applicant submitted an answer to the SOR that was received by DOHA on August 5, 2004, admitted all SOR allegations except subparagraph 1.b., and requested a hearing.

The case was assigned to me on September 24, 2004. A notice of hearing was issued on November 4, 2004, scheduling the hearing for December 2, 2004. The hearing was conducted as scheduled. The government submitted nine documentary exhibits that were marked as Government Exhibits (GE) 1-9. GE 1 and GE 3-9 were admitted into the record without objection. Applicant's objection to GE 2 was sustained in part and denied in part, and the exhibit was then admitted into the record for the limited purpose noted.

Applicant testified, and submitted 13 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-13, and admitted into the record

without objection. The transcript was received by DOHA on December 13, 2004.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 54-year-old man who has been employed by a defense contractor since 1975. He was hired as a janitor, but after he obtained a bachelor's degree in human resources in 1992, Applicant began working as a network administrator. Applicant was married in December 1974, separated from his wife in 1995, and obtained a divorce in October 1998. He has two adult children.

Applicant filed for protection under Chapter 7 of the bankruptcy code in April 1994. He listed \$75,600.00 in secured claims, \$11,400.00 in unsecured priority claims that consisted totally of state and federal taxes due, and \$19,882.00 in unsecured nonpriority claims in the petition. Applicant blamed the need to file for bankruptcy on his wife quitting her employment in 2002, her misusing credit cards, and his salary being greatly reduced because of his change of career fields.

Applicant incurred state tax deficiencies in the amount of \$5,047.68 for the tax years ending in 1996, 1997, 1998, and 1999. His wages were garnished beginning in 2001, and a 2003 refund was intercepted to apply to the deficiency.

Applicant's credit report disclosed a delinquent account in the amount of \$90.00 that was placed for collection in May 2003. Although he denies being indebted to the creditor, Applicant paid the bill to have it removed from his credit report. The SOR lists a judgment that was entered against Applicant in December 1995. Applicant testified this was the result of his ex-wife not paying a utility bill after he moved out of the marital residence. AE 8 shows the judgment was satisfied in June 1996.

Applicant failed to pay federal taxes due for the tax years ending in 1992, 1993, 1995, 1996, 1997, 1998, 1999, and 2000. With statutory additions added to his tax liability, as of January 9, 2003, he was indebted to the Internal Revenue Service (IRS) in that amount of \$81,475.70. Applicant testified the large deficiency in withholding taxes was due to his decision to claim ten withholding exemptions, at least six more than he was entitled to claim, in order to retain more money to make ends meet. (Tr. 35) At one time he entered into a payment plan with the IRS, but it ended when it was determined the amount he was paying was less than the interest and penalties that were accruing. He made offers of compromise to the IRS in the amounts of \$5,000.00 and \$21,000.00 that were rejected.

Applicant contacted an attorney after he was unsuccessful in resolving his tax problems by himself. The attorney advised him to again file for

Chapter 7 bankruptcy protection, which he did in July 2004. He was granted a discharge in October 2004. Applicant's attorney forwarded the discharge to the IRS on October 21, 2004. AE 4 contains releases of federal tax liens that are dated October 27, 2004 and November 10, 2004, and which certify that Applicant has satisfied taxes for the years 1993-2000. Applicant's attorney sent a copy of the bankruptcy petition to the state comptroller on August 12, 2004, which, on August 27, 2004, cancelled the wage lien the state had served on Applicant's employer.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant found himself with unmanageable debt that caused him to file for bankruptcy protection in 1994. He thereafter for many years deliberately overstated the number of withholding exemptions to which he was entitled in order to increase his net pay, knowing he would be unable to pay state and federal taxes when they came due. Disqualifying Condition (DC) 1: *A history of not meeting financial obligations*; DC 2: *Deceptive or illegal financial practices . . .*; and DC 3: *Inability or unwillingness to satisfy debts* apply in this case.

Applicant credibly testified the collection account was in error and the judgment resulted from his wife not paying a utility bill after he moved out of the marital residence. Those SOR allegations are found for Applicant. His testimony about the circumstances leading up to the 1994 bankruptcy entitles him to credit under mitigating Condition 3: *The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*. That SOR allegation is also found for Applicant.

The evidence indicates the 2004 bankruptcy discharge freed Applicant of the obligation to repay his delinquent taxes. Accordingly, he is entitled to credit under C 6: *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*. However, Applicant's willingness to grossly overstate, for many years, the number of withholding exemptions to which he was entitled, knowing he would thereafter be unable to pay his income taxes as they came due, and thereby shortchanging the government to advance his personal financial interests, creates a serious security concern. His actions call into question his judgment and trustworthiness.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Considering all relevant and material facts and circumstances present in this case, including the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has failed to mitigate the security concern caused by the way he has conducted his financial affairs. He has failed to overcome the case against him or satisfy his ultimate burden of persuasion. Guideline F is decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraph a: Against Applicant

Subparagraph b: For Applicant

Subparagraph c: Against Applicant

Subparagraph d: For Applicant

Subparagraph e: For 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. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.

10. Id at 531.

11. *Egan*, Executive Order 10865, and the Directive.