

KEYWORD: Financial

DIGEST: Applicant, a 42-year-old employee of a defense contractor, failed to file and pay federal income taxes from 1993-1995. After receiving notice of this default from the IRS in 2000, she has failed to repay the back taxes. She has not mitigated the security concerns arising from her financial difficulties. Clearance is denied.

CASENO: 03-14761.h1

DATE: 09/29/2005

DATE: September 29, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-14761

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a 42-year-old employee of a defense contractor, failed to file and pay federal income taxes from 1993-1995. After receiving notice of this default from the IRS in 2000, she has failed to repay the back taxes. She has not mitigated the security concerns arising from her financial difficulties. Clearance is denied.

### **STATEMENT OF THE CASE**

On June 9, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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. Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations, of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 1, 2005, Applicant submitted a notarized response to the allegations. She elected to have her case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on July 29, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response or additional evidence. This case was assigned to me on September 12, 2005.

### FINDINGS OF FACT

Applicant admitted the allegation in subparagraph 1.a of the SOR.<sup>(1)</sup> This admission is incorporated herein as a finding of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 42-year-old software engineer/analyst for a defense contractor.<sup>(2)</sup> She began her employment for this contractor in March 2005.<sup>(3)</sup> She previously worked for another defense contractor for three and one-half years.<sup>(4)</sup> She completed her initial security clearance application (SF 86) in October 2001 and a second SF 86 in April 2005.<sup>(5)</sup>

Applicant married her first husband in 1988 and they divorced in 2002.<sup>(6)</sup> Applicant has remarried.<sup>(7)</sup> She has two children, ages 16 and 11, who live with her.<sup>(8)</sup> Applicant owns her own home.<sup>(9)</sup> Although she experienced financial problems during her first marriage as a result of her husband's spending habits,<sup>(10)</sup> her credit accounts are paid and current.<sup>(11)</sup>

The Internal Revenue Service filed a tax lien against Applicant and her former husband in October 2000 for unpaid taxes for the years 1993, 1994 and 1995.<sup>(12)</sup> The tax lien totaled \$15,062.20.<sup>(13)</sup> Prior to this filing, she did not know that these tax returns had not been filed, as her former spouse had led her to understand that the tax returns had been properly and timely filed.<sup>(14)</sup> In May 2001, the IRS initiated a garnishment action against her salary, which resulted in a \$250.00 biweekly payment on the lien.<sup>(15)</sup> When she left her then employer at the end of August 2001, the garnishments stopped.<sup>(16)</sup> She has made not any additional payments on this debt, despite assurances that the debt would be resolved.<sup>(17)</sup>

Applicant's most recent monthly income and expense statement indicates that she has assets totaling \$145,000.00,<sup>(18)</sup> her gross monthly income is \$5,642.00, and her net monthly income is \$4,268.00.<sup>(19)</sup> She also receives \$573.00 a month in child support for a total net monthly income of \$4,841.00.<sup>(20)</sup> Her monthly expenses total \$3,000.00.<sup>(21)</sup>

Applicant's available monthly income to pay her tax debt is \$1,841.00.

## POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(22)</sup> The government has the burden of proving controverted facts.<sup>(23)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(24)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.<sup>(25)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(26)</sup>

No one has a right to a security clearance<sup>(27)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(28)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(29)</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>(30)</sup> 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.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.**

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial obligations*), and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply in this case. During her first marriage, Applicant had difficulties meeting all her financial obligations, in part because of her former husband's spending habits. More importantly, the IRS filed tax liens against her and her former husband after he failed to file tax returns for three years. Although she has resolved her other credit problems, she has made no effort to repay these overdue taxes.

I considered all the Financial Considerations Mitigating Conditions (FC MC), and concluded that none apply in this case. Applicant's tax problem has been a known and ongoing issue since October 2000. Although the IRS filed only one lien against her, the tax returns were not filed for three years, thus, the failure to file the returns is not an isolated incident. While her former husband's failure to advise her that he had not filed their tax returns is an event beyond her control, it does not explain or justify why she has not undertaken any concrete, independent steps to resolve her tax issues. The only payments on this debt occurred when the IRS garnished her salary in May 2001. Four months later, she left her employment and repayment stopped. Since then, she has made no further effort to repay these the overdue federal taxes. Once her expenses are deducted from her net income, she clearly has sufficient assets to develop a reasonable repayment plan with the IRS. She has not sought or received credit counseling to resolve this issue.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am not persuaded by the totality of the evidence that Applicant has shown that she will pay her overdue tax debt. She has not yet taken any definitive steps to resolve it nor has she developed any plans to do so. I conclude that Applicant has not mitigated and overcome the government's case under Guideline F. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

## **FORMAL FINDINGS**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25. of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

## **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 3 (Applicant's Answer to SOR, dated July 1, 2005) at 1.
2. Item 4 (Second Security Clearance Application, dated April 18, 2005) at 1.
3. *Id.*
4. *Id.* at 2.
5. *Id.*; Item 5 (First Security Clearance Application, dated October 3, 2001).

6. Item 4, *supra* note 2, at 3.
7. *Id.*
8. *Id.* at 4.
9. Item 3, *supra* note 1, at 1.
10. Item 7 (Applicant's signed statement, dated May 14, 2003) at 2.
11. Item 6 (Applicant's May 20, 2004 Answers to Interrogatories with attachment's, including a May 8, 2004 credit report) at 8-19.
12. *Id.* at 9; Item 7, *supra* note 10, at 2.
13. *Id.* Item 7.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*; Item 3, *supra* note 1, at 1.
18. Item 6, *supra* note 11, at 7. Her assets are: 1) her home valued at \$125,000, and 2) stocks/bonds valued at \$20,000.
19. *Id.*
20. *Id.*
21. *Id.*; Item 3, *supra* note 1, at 1; Item 7, *supra* note 10, at 3 (income and expense statement shows a mortgage payment of \$650.00 to Applicant's parents).
22. ISCR Case No. 96-0277 (July 11, 1997) at 2.
23. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
24. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
25. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
26. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
27. *Egan*, 484 U.S. at 531.
28. *Id.*
29. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
30. Executive Order No. 10865 § 7.