

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 37-year-old employee of a federal contractor with a history of tax problems beginning in 1996, some of which are attributable to her husband's failed business. Since 2000, Applicant has resolved two tax liens; however, a state tax lien remains outstanding, as well as unpaid federal taxes. She denied that she deliberately failed to disclose tax liens, claiming one was related to her husband's business and the other was unknown to her. She failed to mitigate security concerns arising from financial considerations and personal conduct. Clearance is denied.

CASENO: 04-01887.h1

DATE: 11/23/2005

DATE: November 23, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-01887

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 37-year-old employee of a federal contractor with a history of tax problems beginning in 1996, some of which are attributable to her husband's failed business. Since 2000, Applicant has resolved two tax liens; however, a state tax lien remains outstanding, as well as unpaid federal taxes. She denied that she deliberately failed to disclose tax liens, claiming one was related to her husband's business and the other was unknown to her. She failed to mitigate security concerns arising from financial considerations and personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On December 14, 2004, the Defense Office of Hearings and Appeals (DOHA) under 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, which is essentially an administrative complaint, detailed reasons under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On January 10, 2005, Applicant answered the SOR in writing and elected to have the case decided on the written record. <sup>(1)</sup> On March 4, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy. <sup>(2)</sup> Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 1, 2005, and did not submit any additional information. This case was assigned to me on September 14, 2005.

## **FINDINGS OF FACT**

In her answer to the SOR, Applicant admitted the allegations contained in subparagraphs 1.a., 1.b., and 1.c. under Guideline F. These admissions are incorporated into my findings of fact. She denied subparagraph 2.a. under Guideline E. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is 37 years old and has been married to her second husband since 1996.<sup>(3)</sup> She has worked for a federal contractor for approximately 13 years and previously held a top-secret clearance that was issued in March 1997.<sup>(4)</sup> Applicant completed another Security Clearance Application (SCA) in March 2002 for her present position as a procurement assistant.<sup>(5)</sup>

Prior to their marriage, Applicant's second husband experienced business and financial difficulties related to a franchise he owned. Those problems resulted in the discharge of his business debts through a Chapter 7 bankruptcy entered in May 2003.<sup>(6)</sup>

Subsequent to this marriage, Applicant and her husband encountered additional financial problems related to the payment of state and federal taxes. In December 2000, the state entered a lien against their property in the amount of \$9,953.00.<sup>(7)</sup> Although Applicant claimed that the lien was released with the sale of their house in September 2001, an October 2004 credit report indicates that it has not been satisfied.<sup>(8)</sup> The Applicant did not submit any documentation to refute the credit report.

In April 2001, a federal tax lien was filed for \$58,298.00, which was released in September 2001.<sup>(9)</sup>

Applicant stated that both of these liens related to delinquent taxes accrued in 1996 as an outgrowth of her husband's business problems.<sup>(10)</sup>

From March 2000 to December 13, 2001, the Internal Revenue Service (IRS) sent numerous levy notices to Applicant stating its intent to begin the collection process on taxes owed for 1996, 1997, 1998 and 1999. On March 9, 2000, May 19, 2000, and December 13, 2001, Applicant received notice of the impending levy, as documented by the signed return receipts, accompanying the notices.<sup>(11)</sup> In February 2002, the IRS filed a tax lien for \$71,219.00, representing unpaid taxes for those years. The lien was released on July 10, 2003.<sup>(12)</sup>

In April 2004, Applicant admitted that they owed federal taxes for the year 2000, but disputed the \$13,584.00 amount.

[\(13\)](#) In January 2005, Applicant acknowledged the debt remained unpaid and still in dispute. [\(14\)](#)

When Applicant signed her SCA on March 29, 2002, she certified her answers were "true, complete, and correct" to the best of her knowledge and belief, and acknowledged that a knowing and willful false statement could be punished by fine and/or imprisonment. In response to "Question 36 (*Your Financial Record - Tax Lien: In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?*)", she answered "No." She did not list the state tax lien filed in December 2000, or the federal tax lien filed in February 2002. [\(15\)](#) After meeting with a government investigator regarding her answers to the SCA, Applicant submitted a supplemental explanation, which specifically addressed her financial history. She did not list the 2000 state lien because it related to her husband's business. As to the 2002 federal lien, she claimed she did not learn about it until June 2003, and upon discovering it, resolved it in July 2003 [\(16\)](#)

While her reason for not disclosing the 2000 state lien relating to her husband's business is credible, her explanation that she did not know about the 2002 federal tax lien prior to March 2002, is not credible, given the various notices sent to her by the IRS regarding the unpaid tax years.

Since her husband closed his franchise in January 2003, and discharged his business debts through bankruptcy in May 2003, Applicant's financial status has improved. [\(17\)](#)

## **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 (DC) and mitigating conditions (MC) 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>(18)</sup> The government has the burden of proving controverted facts.<sup>(19)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(20)</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>(21)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(22)</sup>

As noted by the Court in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), "it should be obvious that no one has a right to a security clearance"<sup>(23)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(24)</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>(25)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(26)</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.

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 life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration relevant circumstances, and applying sound judgment, mature thinking and careful analysis.

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

**Guideline F - Financial Considerations: The security concern is an individual who is financially overextended maybe at risk of having to engage in illegal acts to generate funds.**

**Guideline E - Personal Conduct: The security concern arises when individual conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations could indicate that a person may not properly safeguard classified information.**

## CONCLUSIONS

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

### Guideline F: Financial Considerations

The government established its case under Guideline F. Based on the evidence, Financial Consideration Disqualifying Condition (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*) applies to this case. Since 2000, Applicant has been engaged in disputes with the federal and state governments regarding delinquent taxes. Although some of the issues have been resolved, a state lien for \$9,953.00 and federal taxes of \$13,584.00 (totaling \$23,537.00) remain outstanding.

While the state lien relating to her husband's business is mitigated under Financial Consideration Mitigating Condition E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control*), the unpaid federal taxes are not mitigated. In April 2004, Applicant was in the process of resolving the unpaid 2000 taxes. In January 2005, those taxes were still not paid. Given the length of time it is taking to resolve the debt, I conclude that Applicant is not making a good-faith effort to resolve this matter. Hence, none of the mitigating conditions under Guideline F applies, including, (FC MC) E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

### Guideline E: Personal Conduct

The government also alleged that Applicant falsified her SCA by failing to disclose two tax liens filed within the previous seven years. Based on the evidence, the government established its case under Guideline E, specifically, Personal Conduct Disqualifying Condition (PC DC) E2.A5. 1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). Although Applicant's failure to disclose the 2000 state tax lien was not deliberate because she thought the lien related to her husband's business and not to her, the failure to disclose the 2002 federal tax lien is construed to be a deliberate omission based on a history of notifications from the IRS for over a year, verification of receipt of the levy notices on three separate dates, as well as the knowledge that several years of taxes remained unpaid as of March 2002.

After considering all of the evidence in this case including, Applicant's work history, her husband's business problems, the taxes that were resolved, and the "whole person" concept in my evaluation of Applicant's risk and vulnerability in protecting our national interest, I find Applicant has failed to mitigate the security concerns caused by financial considerations and personal conduct. Therefore, I am persuaded by the totality of the evidence in this case that it is clearly not consistent with the national interest to grant Applicant a security clearance at this time. Accordingly, Guidelines F and E are decided against the 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 as follows:

#### **Paragraph 1: Guideline F (Financial Considerations) AGAINST THE APPLICANT**

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

#### **Paragraph 2: Guideline E (Personal Conduct) AGAINST THE 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 a security clearance for Applicant. Clearance is denied.

Shari Dam

Administrative Judge

1. Item 3 (Answer to SOR, dated January 10, 2005).
2. The Government submitted ten exhibits in support of its case.
3. Item 4 (Security Clearance Application, dated March 29, 2002) at 1 & 3.
4. *Id.* at 2 & 5.
5. *Id.* at 1.
6. Item 6 (Interrogatory Response of Applicant, dated April 21, 2004) at 3.
7. Item 8 (Report of Credit, dated April 9, 2002) at 14.
8. Item 7 (Report of Credit, dated October 23, 2004) at 1.
9. *Id.* at 1.
10. Item 5 (Statement of Subject, dated August 18, 2003) at 2.
11. Item 9 (Internal Revenue Transcripts for years 1996 through 2002) at 57-62.
12. Item 7, *supra* note 8, at 1.
13. Item 9, *supra* note 11, at 65; Item 6, *supra* note 6, at 2.
14. Item 3, *supra* note 1, at 1.



15. Item 4, *supra* note 3, at 8.
16. Item 5, *supra* note 10, at 2-3.
17. Item 6, *supra* note 6, at 3.
18. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
19. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
20. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
21. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
22. ISCR Case No. 93-1390 at 7-8 (App. Bd., Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
23. *Egan*, 484 U.S. at 528.
24. *Id.*
25. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
26. Executive Order No. 10865 § 7.