

KEYWORD: Financial

DIGEST: Applicant failed to file his federal and state income tax returns for 2002 and 2003 until May 2005. Despite having income of more than \$90,000 a year, he still owes more than \$5,000 in taxes. Applicant failed to mitigate security concerns raised by his failure to timely resolve his debts. Clearance is denied.

CASENO: 04-02613.h1

DATE: 08/15/2005

DATE: August 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-02613

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to file his federal and state income tax returns for 2002 and 2003 until May 2005. Despite having income of more than \$90,000 a year, he still owes more than \$5,000 in taxes. Applicant failed to mitigate security concerns raised by his failure to timely resolve his debts. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 2 November 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 1 December 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 ay 2005. On 23 June 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 29 June 2005.

FINDINGS OF FACT

Applicant is a 52-year-old senior manager for a defense contractor. He leads a team testing space systems for the government. He served 21 years in the U.S. Air Force, retiring as a master sergeant (E-7) in 1993. He has worked for his current employer since then. He has held a security clearance since 1972. Tr. 32. His current income exceeds \$90,000 a year.

Applicant's mother became ill and he spent considerable sums of money traveling back and forth to visit her. He has been divorced since 1986. He has no alimony obligation. His only child is an adult. He did provide her some financial assistance when she was pregnant and out of work.

Applicant started to experience financial problems in the summer of 2002. He failed to file his federal and state income tax returns for tax years 2002 and 2003 until May 2005. Tr. 38-39. He claims to owe approximately \$4,300 for 2002 and \$3,500 for 2003. ⁽²⁾ He owes the state approximately \$825. He has scheduled a meeting with an IRS agent for July to

discuss what penalties and interest will be assessed. He filed and paid his 2004 federal taxes.

On 24 September 2003, Applicant provided a signed, sworn statement with a personal financial statement to an agent of the Defense Security Service. Ex. 3 at 5. At the time, Applicant reported he was current on his mortgage, but had a debt of over \$3,700 on which he was delinquent. Yet he had a total of \$1,920 left over each month after paying his bills and had \$100,000 in his 401K plan. Eighteen months later, he still has not paid his tax debts and has at least one \$5,000 debt in collection status. He is paying that debt off at \$200 a month.

The following chart lists the delinquent debts alleged in the SOR and their current status.

¶	Debt	Status	Record
1.a	IRS tax year 2002 owes \$4,300	Not paid. Meeting IRS in July to discuss total taxes and penalties owed. Plans to pay with money from refinancing his home.	Tr. 20-21
1.b	State taxes in amount of \$1,100	Still owes some money	
1.c	Medical services-\$86	Paid	Ex. B
1.d	Hospital-\$292	Paid	Ex. B
1.e	Credit card charged off \$557	Paid	Ex. C
1.f	Credit card- charged off \$2,103	Unknown.(3)	Tr. 24-25
1.g	Acct charged off \$3,123	Settled for \$300-claims it isn't his debt	Ex. G
1.h	Wireless telephone	Paid May 2004	Ex. D
1.i	Student Loan delinquent \$1,584	Claims it isn't his debt, but has not disputed it with the credit bureaus	Ex. H

At the hearing, Applicant presented another personal financial statement. It shows he has over \$3,000 income remaining each month after he pays his bills. Rather than pay off his debts, he places the money in his savings account, which now holds \$33,000. Tr. 45. In addition, Applicant reports having \$12,000 equity in his home and a retirement fund valued at more than \$158,000. Tr. 45; Ex. M.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant acknowledged owing the IRS taxes for tax year 2002 (¶ 1.a), acknowledged owing the state approximately \$1,100 in state taxes (¶ 1.b), is indebted to a city for \$86 (¶ 1.c) and a hospital for \$292 (¶ 1.d) that had been turned over to a collection agency; and has five delinquent debts (¶¶ 1.e-i) totaling more than \$7,300. Applicant admitted each of the allegations, except that in ¶ 1.g, and provided explanations. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and has been unwilling to satisfy his debts (DC E2.A6.1.2.3). I have considered all of the mitigating conditions and find none apply. Applicant noted that some of his financial problems resulted from conditions beyond his control (MC E2.A6.1.3.3)-traveling to visit his ill mother and supporting his pregnant daughter. But his mother died in 2002 and he no longer is the sole source of support for his daughter and granddaughter. Although he has paid or settled the smaller debts, his tax liability remains unpaid even though he has the means to do so. Even after he admitted his delinquent tax liabilities in April 2004, it took him more than a year to file his returns. Considering his savings and earnings and his lack of urgency to take care of his financial obligations, I am unable to conclude Applicant has made a good-faith effort to resolve these debts. *See* MC E2.A6.1.3.6. Under all the circumstances, I find against Applicant on the unpaid tax liabilities. I find for him on the debts he paid.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

DECISION

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

James A Young

Administrative Judge

1. As required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. The SOR only alleges he owed IRS for tax year 2002.
3. Applicant claims this debt was consolidated with the debt alleged in ¶ 1.e which was paid. Ex. C. Applicant failed to produce proof of this or even evidence that such a debt is no longer listed on his credit report.