

KEYWORD: Financial; Personal Conduct

DIGEST: The Applicant has serious, delinquent, Federal tax liabilities which cannot be resolved in the near future. Her financial affairs are not yet in order. In addition, the Applicant intentionally falsified a Security Clearance Application concerning the true state of her bankruptcy cases and the fact that the Federal and state governments had filed numerous liens against her property. Adverse inference is not overcome. Clearance is denied.

CASENO: 04-05272.h1

DATE: 11/16/2005

DATE: November 16, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05272

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Doc Anthony Anderson III, Esquire

SYNOPSIS

The Applicant has serious, delinquent, Federal tax liabilities which cannot be resolved in the near future. Her financial affairs are not yet in order. In addition, the Applicant intentionally falsified a Security Clearance Application concerning the true state of her bankruptcy cases and the fact that the Federal and state governments had filed numerous liens against her property. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On December 15, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 12, 2005, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on April 11, 2005. The Applicant acknowledged receipt of the FORM on April 21, 2005. Her counsel was given an extension until June 15, 2005, to submit any additional information to the Administrative Judge. The Applicant's counsel submitted a Response consisting of 13 Applicant Exhibits on June 15, 2005. Department Counsel indicated that she had no objection to the additional information. The case was received by the undersigned for Decision on July 7, 2005.

FINDINGS OF FACT

The Applicant is 45 and married. She is employed by a defense contractor as an Executive Secretary, and she seeks to retain a DoD security clearance previously granted in connection with her employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, and the exhibits.

Paragraph 1 (Guideline F - Financial considerations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts in order to obtain funds.

1.a. The Applicant paid this past due account in the amount of \$6,643.00 in February 2004. (Applicant's Exhibits 9 and 11 at 1-2.)

1.b. The Applicant has two accounts with Capital One Bank. In her sworn statement of July 28, 2003, the Applicant states:

I also stated that I would contact Capitals (*sic*) One, which I owe \$1,225.00. I believed I paid this account in full, however, after contacting a representative of Capital One today, it was determined that I paid one account off in full in Jan 01, however, there is still a delinquent account of \$1225.00 that I still owe. I intend to contact Capital One again later today and set up a payment schedule with them and make payments until this debt is paid in full. (Government Exhibit 32 at 2.)

Applicant's Exhibit 11 is a credit report dated June 7, 2005. That report shows that one of the accounts was paid off for less than the full amount. (Applicant's Exhibit 11 at 6-7.) The other account is still past due and owing \$1,756.00 or \$1,822.00. (Applicant's Exhibit 11 at 2-3.) There is no evidence that the Applicant contacted this creditor to resolve this particular issue. I find that the Applicant continues to owe this debt.

1.c. The Applicant paid this past due debt of \$233.00 to her city government on November 17, 2004. (Applicant's Exhibit 6 at 2.)

1.d. The Applicant paid this past due debt of \$155.00 in January 2005. (Government Exhibit 43, Applicant's Exhibit 10.)

1.e. The Applicant in her Answer denied owing this debt. (*See* Government Exhibit 34 at 3.) Her attorney maintains that she has satisfied this past due debt in the amount of \$52.00. The evidence is mixed on this point. Her most recent credit report has one credit agency showing the Applicant with no amount past due. A second credit agency shows the Applicant continuing to owe \$52.00. (Applicant's Exhibit 11 at 5-6.) Given the state of the record, this subparagraph is found for the Applicant.

1.f. The available evidence shows that the Applicant paid this past due debt in February 2004. (Applicant's Exhibit 11 at 4-5.)

1.g. This debt concerned unpaid sales and use taxes in the amount of \$4,427.89 for the year 1994. A state tax lien was filed only against the Applicant's spouse and his business (Government Exhibit 9). In 2000, the state filed an Earnings Withholding Order for Taxes against the spouse's pay. It appears the debt was paid off in 2003. (Applicant's Exhibit 8.)

1.h. This debt concerned unpaid Federal income taxes for the year 1994. A tax lien was filed in the amount of \$14,361.54 regarding both the Applicant and her spouse on August 14, 1996. (Government Exhibit 12). Beginning in 1995, there were ongoing negotiations between the Applicant, her spouse, and the Internal Revenue Service (IRS). (Applicant's Exhibit 7 at 1-8.) A payment arrangement was agreed to by the IRS with the Applicant and her husband in August 2003. They agreed jointly to pay back taxes for several years, including this one, in the total amount of \$56,058.67 plus penalties and interest. (Applicant's Exhibit 7 at 3.) This particular tax debt was successfully paid in 2005 and the Federal tax lien was released. (Applicant's Exhibit 7 at 9-11.)

1.i. This debt concerned unpaid unemployment insurance taxes in the amount of \$1,425.22 for the years 1996 and 1997. A state tax lien was filed only against the Applicant's spouse and his business (Government Exhibit 13). This debt was paid in January 2004 and the lien was released by the state. (Applicant's Exhibit 6 at 1,4.)

1.j. This debt concerned unpaid unemployment insurance taxes in the amount of \$97.73 for the year 1997. A state tax lien was filed only against the Applicant's spouse and his business (Government Exhibit 14). This debt was paid in January 2004 and the lien was released by the state. (Applicant's Exhibit 6 at 1,4.)

1.k. This debt concerned unpaid Federal income taxes for the years 1994, 1995, 1996, 1997 and 1998. A tax lien was filed in the amount of \$84,228.33 regarding the Applicant's spouse on May 4, 1999. (Government Exhibit 23). As stated earlier, there were ongoing negotiations between the Applicant, her spouse, and the Internal Revenue Service (IRS).

(Applicant's Exhibit 7 at 1-8.) A payment arrangement was agreed to by the IRS and the Applicant's spouse in August 2003. (Applicant's Exhibit 7 at 4.) IRS records confirm that the 1994, 1996, 1997 and 1998 back taxes have been paid off. (Applicant's Exhibit 7 at 9-11, 13-15.) However, a joint tax liability of the Applicant and her husband remains for tax year 1995. As of May 23, 2005, that amount is \$7,709.57. (Applicant's Exhibit 7 at 12.)

1.l. This debt concerned unpaid Federal income taxes for the years 1997 and 1998. A tax lien was filed in the amount of \$7,182.31 regarding the Applicant's spouse on May 6, 1999. (Government Exhibit 24). A payment arrangement was agreed to by the IRS and the Applicant's spouse in July 2003. (Applicant's Exhibit 7 at 1-8.) IRS records confirm that the 1997 and 1998 back taxes have been paid off. (Applicant's Exhibit 7 at 14-15.)

1.m. This debt concerned unpaid unemployment insurance taxes in the amount of \$666.02 for the year 1997. A state tax lien was filed only against the Applicant's spouse and his business (Government Exhibit 25). This debt was paid in January 2004 and the lien was released by the state. (Applicant's Exhibit 6 at 1,4.)

1.n. This debt concerned unpaid unemployment insurance taxes in the amount of \$6,688.51 for the year 1998. A state tax lien was filed only against the Applicant's spouse and his business (Government Exhibit 28). This debt was paid in January 2004 and the lien was released by the state. (Applicant's Exhibit 6 at 1,4.)

1.o. This debt concerned unpaid Federal income taxes for the years 1995 and 1996. A tax lien was filed in the amount of \$27,663.30 regarding both the Applicant and her spouse on April 3, 2002. (Government Exhibit 29). As stated earlier, there were negotiations between the Applicant, her spouse, and the Internal Revenue Service (IRS). (Applicant's Exhibit 7 at 1-8.) A payment arrangement was agreed to by the IRS and the Applicant and her husband in August 2003. They agreed jointly to pay back taxes for several years, including this one, in the total amount of \$56,058.67 plus penalties and interest. (Applicant's Exhibit 7 at 3.) IRS records confirm that the 1996 back taxes have been paid off. As stated earlier, a balance of \$7,709.57 remained from the delinquent 1995 taxes. (Applicant's Exhibit 7 at 11-12.)

1.p. This debt concerned unpaid Federal income taxes for the year 1999. A tax lien was filed in the amount of \$6,324.36 regarding the Applicant's spouse on ay 3, 2002. (Government Exhibit 30). A payment arrangement was agreed to by the IRS and the Applicant's spouse in July 2003. (Applicant's Exhibit 7 at 1-8.) IRS records confirm that the 1999 back taxes were paid off in 2004. (Applicant's Exhibit 7 at 16.)

1.q. This debt concerned unpaid Federal income taxes for the year 2001. A tax lien was filed in the amount of \$5,115.98 regarding both the Applicant and her spouse on November 27, 2002. (Government Exhibit 33). As stated earlier, there were negotiations between the Applicant, her spouse, and the Internal Revenue Service (IRS). (Applicant's Exhibit 7 at 1-8.) A payment arrangement was agreed to by the IRS with the Applicant and her husband in August 2003. They agreed jointly to pay back taxes for several years, including this one, in the total amount of \$56,058.67 plus penalties and interest. (Applicant's Exhibit 7 at 3.) IRS records show that, as of May 23, 2005, the 2001 indebtedness had risen to

\$6,892.78. (Applicant's Exhibit 7 at 17.)

1.r. The Applicant and her husband filed for relief under Chapter 7 of the Bankruptcy Code on November 25, 1998. (Government Exhibit 39.) This event occurred several months after the dismissal of their Chapter 13 bankruptcy, discussed immediately below. At that time, they declared \$128,638.89 in assets and \$240,825.97 in liabilities. (Government Exhibit 39 at 39.) The Applicant and her husband received a discharge on February 4, 1999. (Government Exhibit 39 at 40.)

1.s. The Applicant and her husband filed for protection under Chapter 13 of the Bankruptcy Code on October 10, 1996. (Government Exhibit 40.) At that time, they declared \$125,800.00 in assets and \$167,705.22 in liabilities. (Government Exhibit 40 at 28.) The plan was confirmed on January 24, 1997. The case was dismissed for failure to make plan payments on May 1, 1998. (Government Exhibit 40 at 203.) The Proof of Claim filed by the IRS on January 10, 1997, states that the IRS filed tax liens concerning the 1993 and 1994 taxes on August 14, 1996. (Government Exhibit 40 at 55-56.)

1.t. The Applicant reports that her current financial situation is stable. Applicant's Exhibit 2 states that the Applicant and her husband make \$10,860.00 a month. However, \$5,430.00 of that amount consists of unexplained non-wage income. The Applicant states that the family monthly expenses amount to \$8,869.00. (Applicant's Exhibit 2.)

The Applicant's financial condition is also affected by additional tax debts. Applicant's Exhibit 7 at 18 shows that, as of May 23, 2005, the Applicant and her husband owe \$6,911.38 in back taxes for the year 2002. They owe an additional \$65,791.71 for the 2003 tax year. (Applicant's Exhibit 7 at 19.) When added to the delinquent amounts described above, the Applicant owed at least \$87,305.44 to the Federal government as of May 2005. Without adding any additional interest and/or penalties, it would take at least 29 months for the Applicant to pay this debt off at the rate of \$3,000.00 a month.

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

2.a. On March 21, 2001, the Applicant completed an official DoD questionnaire in which she stated that she had only filed for bankruptcy once, in 1996. ⁽¹⁾ (Government Exhibit 4, question 33.) As set forth above, this Chapter 13 case was dismissed in May 1998. In November 1998, using a different law firm, the Applicant's filed for a Chapter 7 bankruptcy. In her Answer at page 4, the Applicant states, "The chapter 7 was filed immediately upon the dismissal of the Chapter 13. . . This was filed as a result of and simultaneous to the dismissal of Chapter 13." This statement is demonstrably false. Based on the available evidence, I find that the Applicant did intentionally fail to inform the Government of her 1998 Chapter 7 bankruptcy.

2.b. The same questionnaire asks the Applicant whether, in the preceding seven years, a lien had been placed against her property for failure to pay taxes or other debts. (Government Exhibit 4, question 33.) The Applicant answered, "No." As set forth above, eight tax liens had been filed against the Applicant's property between 1995 and 2000. Seven of these liens concerned her husband. One of these, discussed in subparagraph 1.h., specifically concerned the Applicant and her husband's personal taxes. The Applicant argues that she did not know about any of the liens until 2002, when she received a notice from the IRS. (Applicant's Exhibit 7 at 6 9-11.) However, that same exhibit, and others, clearly show that the Applicant had, or should have had, knowledge of the existence of the liens. Based on the available information, I find that the Applicant intentionally failed to inform the Government about the tax liens that had been filed.

2.c. The questionnaire also asked the Applicant to state whether, in the last seven years, she had been more than 180 days delinquent on any debts. (Government Exhibit 4 at question 38.) The Applicant stated, "No." This was a false answer since the Applicant, or her spouse, had at least two debts that were more than 180 days delinquent. However, the record shows some confusion as to whether the Applicant had actual knowledge of the debts set forth in subparagraphs 1.c. and 1.f. (Government Exhibit 34 at 2.) This subparagraph is found for the Applicant.

2.d. The questionnaire also asked the Applicant to state whether she was currently over 90 days delinquent on any debts at the time she filled out the questionnaire. (Government Exhibit 4 at question 38.) The Applicant stated, "No." This was a false answer since one of the Applicant's Capital One accounts was over 90 days delinquent in March 2001. However, it appears that the Applicant was under the belief that this bill had been paid at the time she filled out the questionnaire. This subparagraph is found for the Applicant.

MITIGATION

Applicant's Exhibits 12 and 13 show that the Applicant is a respected member of her community, and a valued employee. She is a talented and able person, who is trusted by her employer and her church.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the

factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this will be set forth under CONCLUSIONS, below.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress

i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of financial irresponsibility and falsification that demonstrate poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has had serious financial delinquencies over many years (Guideline F) and that she intentionally falsified a Government questionnaire (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against her, except in part. Under Paragraph 1 (Guideline F), as set forth above, subparagraphs 1.a., 1.c., 1.d., 1.e. and 1.f. are found for the Applicant as the specific debts have been paid. I find for the Applicant with regards to subparagraphs 1.h., 1.l. and 1.p., because the records indicate that these particular tax debts have been paid off. Regarding Paragraph 2 (Guideline E): Subparagraphs 2.c. and 2.d. are found for the Applicant due to a lack of evidence of intent to falsify.

Turning to Paragraph 1, Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) apply.

The Applicant knew about her debt to Capital One and has done nothing to resolve it since July 2003. Subparagraph 1.b. is found against the Applicant.

The state tax debts have all been resolved. It appears that these all related to the Applicant's husband's business. Subparagraphs 1.g., 1.i., 1.j., 1.k., 1.m. and 1.n. are found for the Applicant.

The Applicant argues that she is not responsible for her husband's Federal tax debts. However, as stated by the IRS when they denied the Applicant's request for innocent spouse relief, "By law, taxpayers that file a joint tax return are equally liable for the tax liability." (Government Exhibit 36 at 1.)

The Federal tax debts set forth in subparagraphs 1.k., 1.o. and 1.q., remain unpaid and are found against the Applicant. In addition, the Applicant owes significant tax liability for the years 2002 and 2003. Given that fact, I cannot find that the Applicant is able to resolve her indebtedness in a reasonable period of time. Subparagraph 1.t. is found against the Applicant.

I have considered the applicability of Mitigating Condition E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). In my opinion, it does not apply in this case. In addition, the growing Federal tax delinquencies are evidence that the problem is not being resolved or is under control. Paragraph 1 is found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of her

personal background. As stated above, I find that the Applicant intentionally misled the Government concerning her second bankruptcy and the true state of the tax liens against her property. Disqualifying Condition E2.A5.1.2.2. applies, (*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.*) None of the Mitigating Conditions apply. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: Against the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: Against the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: For the Applicant.

Subparagraph 1.f.: For the Applicant.

Subparagraph 1.g.: For the Applicant.

Subparagraph 1.h.: For the Applicant.

Subparagraph 1.i.: For the Applicant.

Subparagraph 1.j.: For the Applicant.

Subparagraph 1.k.: Against the Applicant.

Subparagraph 1.l.: For the Applicant.

Subparagraph 1.m.: For the Applicant.

Subparagraph 1.n.: For the Applicant.

Subparagraph 1.o.: Against the Applicant.

Subparagraph 1.p.: For the Applicant.

Subparagraph 1.q.: Against the Applicant.

Subparagraph 1.r.: Against the Applicant.

Subparagraph 1.s.: Against the Applicant.

Subparagraph 1.t.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: For the Applicant.

Subparagraph 2.d.: For the 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. The SOR incorrectly states the date the Security Clearance Application was signed as being March 3, 2001.

