

KEYWORD: Financial

DIGEST: Applicant is 44 years old and has been employed by defense contractors since 1994. In the early 1990's he began accumulating debt, some of which related to unpaid state and federal taxes. Over the last couple of years he has resolved a portion of those delinquent debts and established financial responsibility, however, some of the outstanding taxes remain unpaid. Applicant failed to mitigate the security concerns regarding his financial considerations. Clearance is denied.

CASENO: 04-06107.h1

DATE: 01/24/2006

DATE: January 24, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-06107

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 44 years old and has been employed by defense contractors since 1994. In the early 1990's he began accumulating debt, some of which related to unpaid state and federal taxes. Over the last couple of years he has resolved a portion of those delinquent debts and established financial responsibility, however, some of the outstanding taxes remain unpaid. Applicant failed to mitigate the security concerns regarding his financial considerations. Clearance is denied.

**STATEMENT OF THE CASE**

On February 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline F (Financial Considerations) 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 February 24, 2005, Applicant filed his Answer and elected to have the case decided on the written record in lieu of a hearing. <sup>(1)</sup> On August 29, 2005, Department Counsel prepared a File of Relevant Material (FORM), and provided Applicant with a complete copy on September 20, 2005. <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 FORM on September 27, 2005, and submitted additional information on October 25, 2005, without objection from the Government. The case was

assigned to me on November 28, 2005.

### FINDINGS OF FACT

In his Answer to the SOR, Applicant denied all ten factual allegations pertaining to financial considerations under Guideline F. After a complete review of the evidence in the record, I make the following findings of fact:

Applicant is 44 years old and has been employed as a supervisor for a defense contractor since 2001. He has been steadily employed by various defense contractors for over ten years.<sup>(3)</sup> He is married and has four children.<sup>(4)</sup> He acknowledged that some of his financial liabilities date back to the early 1990's.<sup>(5)</sup> Presently he is living within his means, as his monthly expenses are \$2,515.37 and salary is \$4,275.83. Over the last several years he has saved \$34,000.00 for his retirement, and claims he is current with his financial obligations.<sup>(6)</sup> For the past three years he has attended a state university, majoring in business.<sup>(7)</sup> In December 2002, he completed a security clearance application (SCA).

During a 2004 meeting with a government investigator regarding his answers to the SCA, Applicant admitted that since 1993 he knew he owed \$19,459.83 in federal self-employment taxes for the years 1991-1992.<sup>(8)</sup> However, he was unaware of the \$12,477.00 liability for tax year 1990.<sup>(9)</sup> He intended to pay those taxes by requesting the Internal Revenue Service (IRS) to continue applying his tax refunds to outstanding liabilities. Since 1994 he has employed that method as a means of resolving delinquent taxes for previous years because he has not had enough money to pay the debts in full.<sup>(10)</sup> Although he submitted documentation to prove payment of these debts, his exhibits specifically relate to tax years 2003 and 2004, and not to 1990, 1991 or 1992.<sup>(11)</sup> Hence, those taxes remain unpaid. (¶¶ 1.a. & 1.b.)

In the 2004 meeting Applicant also admitted that since 2002 he has owed a state \$1,711.00 in penalties for an early withdrawal of monies from his retirement plan in 2001. He submitted an exhibit as evidence of payment, however, the dates on the exhibit are 1994 and 1999, and relate to earlier tax year liabilities, not 2001.<sup>(12)</sup> To-date this debt remains unpaid. (¶ 1.c.).

Four of the debts referenced in the SOR relate to medical bills. Two have been paid, one will be paid and the other is disputed. On January 20, 2005, Applicant paid \$79.00 to a collection agency for an outstanding medical bill from 2000/2001.<sup>(13)</sup> The bill related to medical care for his step-son, who was legally responsible for payment at the time it was incurred (¶ 1.d.)<sup>(14)</sup> He also acknowledged an outstanding medical bill for \$430.00 related to treatment his younger son received after an automobile accident in 2002. In February 2005, he agreed to pay the bill, in spite of an on-going dispute with the insurance company.<sup>(15)</sup> As of October 2005, the debt remains unpaid (¶ 1.e.).<sup>(16)</sup> Applicant has consistently disputed another medical bill for \$493.00, claiming it is for treatment he never received (¶ 1.f.).<sup>(17)</sup> On

January 14, 2005, he paid \$78.00 to an x-ray imaging clinic for a 2002 outstanding bill (§ 1.g.).<sup>(18)</sup>

In March 2005, Applicant paid \$188.79 to a department store for checks issued approximately ten years ago but returned for insufficient funds (§ 1.h.).<sup>(19)</sup>

The IRS documented receipt of \$3,543.29 from Applicant on June 22, 2003,<sup>(20)</sup> which is consistent with his statement that he paid the outstanding tax bill on June 2, 2003 (§ 1.i.).<sup>(21)</sup> The IRS also received \$332.72 on April 21, 2003.<sup>(22)</sup> This payment correlates to Applicant's assertion that he paid the debt on April 21, 2003 (§ 1.j.).<sup>(23)</sup>

## **POLICIES**

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.<sup>(24)</sup> The decision to deny an  
<sup>(25)</sup>

individual a security clearance is not necessarily a judgment about an applicant's loyalty. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.<sup>(26)</sup> The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability.<sup>(27)</sup>

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government.<sup>(28)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance."<sup>(29)</sup>

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

**Guideline F - Financial Considerations:** A security concern may exist when 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.

Guideline F's disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

## **CONCLUSIONS**

I have considered all the facts in evidence and legal standards, including the "whole person" concept. The government has established a prima facie case for disqualification under Guideline F.

Based on the evidence, Financial Considerations 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*), apply in this case. Applicant owes approximately \$33,6550.00 in unpaid federal and state taxes, and \$430.00 for prior medical treatment. He has known about the \$19,459.83 tax bill since 1993, the \$1,718.18 penalty as of 2002, and the \$12,477.00 delinquent taxes after his meeting with the investigator in February 2004. He agreed to pay the 2002 medical bill in 2005. To-date, there is no credible evidence in the record indicating these debts have been paid, despite his representations to the contrary.

I have also considered all the Financial Considerations Mitigating Conditions (FC MC), and particularly, FC MC E2.A2.1.3.1. (*The behavior was not recent*), and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or other wise resolve debts*), and conclude neither applies. Applicant's financial indebtedness began in the early 1990's and continues to the present. Because the debts span more than ten years and some remain unpaid, the conduct cannot be considered to have occurred in the past as required under FC MC E2.A2.1.3.1. Since 2003, Applicant has been resolving many of his debts and establishing a solid financial history. However, his recent course of financial responsibility is insufficient to mitigate the amount of unpaid taxes and the length of time they have been outstanding as contemplated by FC MC E2.A6.1.3.6. Accordingly, Applicant has not mitigated the security concerns based on financial considerations. Guideline F is decided against Applicant.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

### **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.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e: Against 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

### **DECISION**

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

Shari Dam

Administrative Judge

1. Item 3 (Answer to SOR, dated February 24, 2005).
2. The Government submitted 12 exhibits in support of its case.
3. Item 4 (Security Clearance Application, dated December 12, 2002) at 2-3.
4. Applicant Exhibit G (Copy of 2004 Income Tax Return) at 1.
5. Item 9 (Statement of Applicant, dated February 10, 2004) at 5.

6. Applicant Exhibit H (Copy of Account Balance Summary for 401(k)); Letter from Applicant, dated October 18, 2005, at 2.
7. Letter from Applicant, *supra* note 6, at 2.
8. Item 9 (Statement of applicant, dated February 10, 2004) at 5.
9. *Id.*; Item 7 (Notice of Federal Tax Lien, dated March 3, 1993) at 4.
10. Item 9, *supra* note 8, at 6.
11. Applicant Exhibit A (IRS Letter, dated February 25, 2005, for tax period ending December 31, 2003); and Applicant Exhibit G (U.S. Individual Income Tax Return 2004).
12. Applicant Exhibit B (1994 and 1999 Release of State Tax Liens).
13. Applicant Exhibit C (Note regarding payment by credit card and reference code).
14. Item 9, *supra* note 8, at 2.
15. Item 3, *supra* note 1, at 2.
16. Letter from Applicant, *supra* note 6, at 1.
17. Letter from Applicant, *supra* note 6, at 1.
18. Applicant Exhibit E (Copy of check to clinic, dated January 14, 2005).
19. Applicant Exhibit F (Copy of March 21, 2005 credit card receipts indicating payment to department store).
20. Item 12 (IRS printout of taxes owed and paid by Applicant, beginning in 1993) at 2. (It is noted that the Government interpreted this exhibit as evidence adverse to the Applicant, when in fact it is exculpatory. Additionally, Government Exhibit 5 (12/28/2002 Credit Report) bears no relation to the SOR allegations referenced in this paragraph.)
21. Item 3, *supra* note 1, at 2.
22. Item 12, *supra* note 21, at 8.
23. Item 3, *supra* note 1, at 2.
24. Directive, Enclosure 2, ¶ E2.2.2.
25. Executive Order 10865, § 7.
26. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
27. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
28. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15.
29. *Id.*