

KEYWORD: Financial

DIGEST: Applicant has not paid or challenged a delinquent credit card debt. He owes about \$27,559 in delinquent federal income taxes for four tax years, and about \$8,621 in delinquent state taxes for six tax years. After learning his security clearance was at risk, he negotiated an installment payment plan for his federal taxes, but he has taken no action to resolve his state tax liability. The security concern based on financial considerations is not mitigated. Clearance is denied.

CASENO: 04-08254.h1

DATE: 01/23/2006

DATE: January 23, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08254

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Nichole I. Noel, Esq., Department Counsel

FOR APPLICANT [\(1\)](#)

Pro Se

SYNOPSIS

Applicant has not paid or challenged a delinquent credit card debt. He owes about \$27,559 in delinquent federal income taxes for four tax years, and about \$8,621 in delinquent state taxes for six tax years. After learning his security clearance was at risk, he negotiated an installment payment plan for his federal taxes, but he has taken no action to resolve his state tax liability. The security concern based on financial considerations is not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On May 25, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 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). The SOR alleges security concerns under Guideline F (Financial Considerations), alleging one delinquent credit card debt and delinquent state and federal income taxes for several years.

Applicant answered the SOR in writing on June 20, 2005, admitted the allegations, and requested a hearing. The case was assigned to me on September 6, 2005. It was reassigned to another administrative judge to consolidate the docket, and it was scheduled for hearing on October 6, 2005. Because Applicant was medically unable to appear on that day, the case was returned to me on October 17, 2005, and heard on December 12, 2005. I kept the record open until January 3, 2006, to enable Applicant to submit additional documentary evidence. He did not submit any additional evidence. DOHA received the transcript (Tr.) on December 22, 2005.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 35-year-old systems administrator/programmer for a defense contractor. He has worked for his current employer since March 2001. He held an interim clearance but it has been suspended.⁽²⁾

Applicant's credit report reflects a credit card debt of \$63 charged off in August 1998 (SOR ¶ 1.a.). It has not been paid.⁽³⁾ He paid off the principal balance on the credit card, but the bank added an additional charge and he has refused to pay it.⁽⁴⁾ He has not contacted the bank or tried to resolve the dispute. Instead, he has given priority to his larger tax debts.⁽⁵⁾

Applicant owes about \$27,559 in delinquent federal income taxes for tax years 1998, 2000, 2001, and 2002 (SOR ¶¶ 1.c., 1.e., 1.g., and 1.i.).⁽⁶⁾ His wife handles the taxes, and he merely signs the return.⁽⁷⁾ He and his wife disputed the amount owed on their federal taxes for 1998 and 2000. He testified the dispute was based largely on the tax liability of his wife's business, but he was unable to describe the basis for the dispute with any specificity. He testified his wife had documentation of the dispute, but he did not produce it.⁽⁸⁾ He testified they did not pay their federal taxes in 2001 and 2002 because they did not want the payment to be credited against the disputed taxes from earlier years.⁽⁹⁾ They filed returns for those two years but did not make any payments.⁽¹⁰⁾ At the hearing, he promised to produce his income tax returns for all tax years after 1998,⁽¹¹⁾ but he did not do so within the additional time I allowed.

After receiving the SOR, Applicant decided to negotiate an installment agreement with the IRS because his security clearance was at risk.⁽¹²⁾ In July 2005, the Internal Revenue Service accepted his offer of an installment agreement providing for an initial payment of \$1,700, and payments of \$538 per month thereafter.⁽¹³⁾ He testified he paid the initial \$1,700, but he produced no documentary evidence of payment.⁽¹⁴⁾

Applicant owes about \$8,621 in delinquent state income taxes for tax years 1996, 1997, 1998, 2000, 2001, and 2002 (SOR ¶¶ 1.b., 1.d., 1.f., and 1.h.). He testified his wife forgot to file in 1996.⁽¹⁵⁾ The state has filed four tax liens against him and his wife for the unpaid taxes.⁽¹⁶⁾ He testified he and his wife have given priority to settling the federal taxes first, and they cannot compute their state tax liability until they compute their federal tax liability.⁽¹⁷⁾ He testified he paid about \$4,300 on this debt when his bank account was attached two years ago, but he presented no documentary proof of this payment.⁽¹⁸⁾ The delinquent state taxes alleged in the SOR remain unpaid.

Applicant testified he and his wife are attempting to obtain a home equity loan to settle their delinquent taxes.⁽¹⁹⁾ He testified they had filed applications with three lenders.⁽²⁰⁾ He promised to produce copies of those applications, but he did not do so even though I allowed additional time to submit evidence.

Applicant and his wife are both college graduates.⁽²¹⁾ Their joint annual income is more than \$110,000. They purchased a new car in 2003 for about \$25,000, and they own a home.⁽²²⁾

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 has 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), as amended and modified. 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.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1 through 6.3.6.

In evaluating an applicant's conduct, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the

applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Under Guideline F "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information. Two disqualifying conditions (DC) under Guideline F could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. Applicant's history of delinquent taxes established DC 1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant has the apparent ability to resolve his debts but, until he received the SOR, was unwilling to do so. I conclude DC 3 is established.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant owes federal and state income taxes for several tax years and has not yet resolved them. I conclude MC 1 and C 2 are not established.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant took no specific steps to resolve his federal tax liability until he learned his security clearance was at risk. As of the date of the hearing, he had taken no action to resolve his state tax liability or the credit card account. I conclude MC 6 is not established.

Applicant has the burden of proving a mitigating condition, and the burden of disproving it is never shifted to the

government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). His testimony about the reasons for his tax problems was vague and uncertain. He did not avail himself of the opportunity I gave him to provide documentary evidence to bolster his case. *See* ISCR Case No. 03-17479 at 3 (App. Bd. Nov. 3, 2005) (administrative judge may consider absence of corroborating documentation). I conclude he has not carried his burden of establishing any mitigating conditions under Guideline F. After considering the disqualifying conditions and the absence of mitigating conditions, and considering all the evidence in the context of the whole person, I also conclude he has not mitigated the security concern based on financial considerations.

FORMAL FINDINGS

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

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

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against 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 Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman

Administrative Judge

1. Applicant is identified in the Statement of Reasons (SOR) by his first name, middle initial, and last name instead of his full name.
2. Tr. 6.
3. Government Exhibit (GX) 3 at 4.
4. Tr. 25.
5. Tr. 30.
6. GX 4 at 4; Applicant's Exhibit (AX) B.
7. Tr. 53.
8. Tr. 35.
9. Tr. 36.
10. Tr. 54.
11. Tr. 63.
12. Tr. 46-48.
13. AX A; AX B.
14. Tr. 26.
15. Tr. 31, 53.
16. GX 5.
17. Tr. 33.
18. Tr. 31-32.
19. Tr. 27.
20. Tr. 50-51.

21. Tr. 60.

22. Tr. 42-43.