

DATE: August 31, 2006

In Re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 04-08941

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred two federal tax liens for debts totaling \$35,440. Applicant has satisfied both liens, which resulted from filing errors by and poor advice from three former tax preparers. The alleged security concerns about Applicant's finances are mitigated. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, Defense Office of Hearings and Appeals (DOHA) adjudicators were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On June 8, 2005, DOHA issued a Statement of Reasons (SOR) to Applicant alleging facts in his background that raise security concerns addressed in the Directive under Guideline F (financial considerations).

Specifically, the government alleged Applicant owed the Internal Revenue Service two debts enforced through tax liens - one for \$9,982 (SOR 1.a) and one for \$25,458 (SOR 1.b). Applicant timely answered the SOR, and requested a hearing.

The case was assigned to a DOHA administrative judge on December 19, 2005, but transferred to me on February 9, 2006, due to workload considerations. I convened a hearing on April 3, 2006, at which the government presented five exhibits (Gx 1 - 5). Applicant testified, presented one witness, and introduced five exhibits (Ax A - E). I left the record open after the hearing to allow Applicant time to submit additional relevant information. His timely post-hearing submission is included as Ax F. DOHA received the transcript (Tr) on April 19, 2006.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 48 years old and is the owner/operator of a long-distance trucking company. He works through leasing agreements with defense contractors for the Department of Defense. The terms of his leases require he hold a security clearance for access to sensitive facilities and knowledge of classified information regarding his loads. Applicant never finished high school, served in the Army from 1975 until 1977, and has been self-employed in the trucking business since 1990.

When he first started his own trucking business, Applicant used the same tax preparer as his father, who owned a service station. However, by the mid-1990s, the tax preparer told Applicant the tax laws relating to Applicant's business had changed so much he could not keep current. Applicant then enlisted the services of another tax preparer he had heard about from other truckers. Unfortunately, this tax preparer made errors in Applicant's tax returns that resulted in tax debts for tax years 1994 and 1995. From 1998 until 2001, Applicant began paying \$1,000 each month on these debts.

Applicant then hired a third tax preparer in 1999. The following year, another tax preparer reviewed Applicant's return and determined the tax paid for tax year 1999 should have been \$900 instead of \$9000, and filed an amended return. Three times the return was filed and each time the IRS rejected the amended return. Finally, Applicant was advised to stop paying his back taxes, whereupon, in May 2001, the IRS filed a lien against Applicant's bank accounts for \$9,982. The lien was lifted after Applicant entered into a \$400 monthly repayment plan.

In January 2005, the IRS filed another lien against Applicant, this time for \$25,458 in unpaid taxes. This amount was identified after the IRS audited Applicant's returns, but the record is unclear as to which tax years were audited to produce this result.

In late 1999 or early 2000, Applicant went to a local IRS office to try to resolve his tax issues. He was told he should submit an offer in compromise to the IRS offering to pay a portion of his tax debts. However, Applicant was having difficulty understanding what he owed for which tax years, and was unable to navigate the paperwork associated with an offer in compromise.

In late 2002, he hired a certified public accountant (CPA) with nearly 40 years experience in resolving tax problems such as Applicant was experiencing. The CPA testified for Applicant at his hearing and has been working with Applicant to ensure his recent tax returns have been accurate. In 2003, the CPA submitted an offer in compromise on behalf of Applicant, but it was rejected for lack of sufficient information. The offer was resubmitted in 2004, but again was rejected.

Finally, in 2005, Applicant's offer was accepted and the CPA began negotiating directly with an IRS representative to arrive at a mutually acceptable resolution. However, the IRS had conducted another audit of Applicant's back taxes through 2005 and determined his total back tax liability to be \$51,312.84. Applicant and his CPA determined the best way to pay this would be to obtain an equity loan against his house. However, banks would not lend him the money because the IRS already had a secured interest in Applicant's house through the January 2005 lien. After three weeks of discussions between the CPA and the IRS representative, the IRS agreed to lift its liens against Applicant's house. On March 29, 2006, Applicant finalized an equity loan for \$62,500, from which Applicant satisfied all of his back tax liabilities. ⁽²⁾

Applicant is financially sound. He and his wife, who is also his driving partner, have three credit cards between them, all in good standing. After expenses each month they have between \$3,000 and \$5,000 remaining. Applicant has had no other financial difficulties or delinquent debts, and has never failed to file his income tax returns as required.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest ⁽³⁾ for an applicant to receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to

classified information. The applicant must then produce information sufficient to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the applicant bears a heavy burden of persuasion.⁽⁴⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁵⁾

The Directive sets forth adjudicative guidelines⁽⁶⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section E2.2.1 of the Directive.⁽⁷⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Given the record evidence as a whole, the relevant adjudicative guideline to be applied here is Guideline F (financial considerations).

CONCLUSIONS

The government has presented sufficient information to support the facts alleged and security concern stated in the SOR. An applicant who is financially overextended through delinquent debt and poor personal financial management may be at risk of engaging in illegal acts to generate funds to resolve their fiscal difficulties.⁽⁸⁾ The government's exhibits show Applicant accrued significant unpaid tax debts between about 1994 and 2001. That debt was not resolved until recently and resulted in at least two liens being filed against Applicant's assets. Accordingly, Guideline F disqualifying condition (DC) 1⁽⁹⁾ applies.

By contrast, the tax liabilities at issue here arose through poor advice of people Applicant counted on to properly prepare his taxes. Applicant is a solid, hard-working person who has managed his finances responsibly. However, regarding the tax requirements associated with running his own trucking business, he does not possess the financial acumen to negotiate the federal tax code. Nonetheless, when he was presented with the tax debts, he paid them as best he could beginning in 1998, but fell further behind when three tax preparers each made mistakes on his returns or gave him unsound advice and the IRS twice audited his returns. Applicant finally was able to enlist the help of a CPA who had sufficient knowledge in these matters and has resolved all his tax obligations. Further, since retaining the CPA in 2002, Applicant has experienced no further problems in accurately determining and paying his taxes. Based on the foregoing, Guideline F mitigating condition (MC) 1, MC 3, MC 4, and MC 6⁽¹⁰⁾ apply here. On balance, I conclude Applicant has mitigated the government's concerns about his finances.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline F (Financial): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Ax F.
3. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. *See Egan*, 484 U.S. at 528, 531.
5. *See Egan*; Directive E2.2.2.
6. Directive, Enclosure 2.
7. Commonly referred to as the "whole person" concept, these factor are as follows:

- E2.2.1.1. The nature, extent, and seriousness of the conduct;
- E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation;
- E2.2.1.3. The frequency and recency of the conduct;
- E2.2.1.4. The individual's age and maturity at the time of the conduct;
- E2.2.1.5. The voluntariness of participation;
- E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes;
- E2.2.1.7. The motivation for the conduct;
- E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and
- E2.2.1.9. The likelihood of continuation or recurrence.

8. Directive, E2.A6.1.1.

9. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;

10. Directive, E2.A6.1.3.1. The behavior was not recent; E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); E2.A6.1.3.4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; and E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.