

KEYWORD: Financial; Personal Conduct

DIGEST: The Applicant and her ex-spouse filed for the protection of bankruptcy in March of 1997. The bankruptcy was due to the failure of her husband's family's grocery store. Federal tax liens for tax years 1992~1995 have been filed against the Applicant and her ex-spouse. She thought her ex-spouse had filed these tax returns, returns she had signed; but he did not file them. The Applicant's ex-spouse admits his culpability, and the Internal Revenue Service (IRS) views her as an "Innocent Spouse." As a result, the IRS only requires her to pay \$25 each month towards tax liens totaling in excess of \$83,000. When the Applicant executed her 2003 Security Clearance Application (SCA), she answered "No" to question 36. She thought the tax liens were filed more than seven years prior. She violated her employer's rules in 2002 by recording another's phone calls. Clearance is granted.

CASENO: 04-09782.h1

DATE: 01/17/2006

DATE: January 17, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-09782

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant and her ex-spouse filed for the protection of bankruptcy in March of 1997. The bankruptcy was due to the failure of her husband's family's grocery store. Federal tax liens for tax years 1992~1995 have been filed against the Applicant and her ex-spouse. She thought her ex-spouse had filed these tax returns, returns she had signed; but he did not file them. The Applicant's ex-spouse admits his culpability, and the Internal Revenue Service (IRS) views her as an "Innocent Spouse." As a result, the IRS only requires her to pay \$25 each month towards tax liens totaling in excess of \$83,000. When the Applicant executed her 2003 Security Clearance Application (SCA), she answered "No" to question 36. She thought the tax liens were filed more than seven years prior. She violated her employer's rules in 2002 by recording another's phone calls. Clearance is granted.

**STATEMENT OF THE CASE**

On August 3, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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.

Applicant filed an Answer to the SOR on September 9, 2005.

The case was received by the undersigned on September 28, 2005. A notice of hearing was issued on October 12, 2005, and the case was heard on November 16, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on November 30, 2005. The issues raised here are whether the Applicant's Financial Considerations and alleged Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, but denies any wilful falsification as alleged in subparagraph 2.a. of the SOR.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 51 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline F -Financial Considerations

1.a.~1.e. The Applicant and her ex-spouse filed for the protection of bankruptcy in March of 1997 (TR at page 18 line 2 to page 19 line 15, and Government Exhibit (GX) 7). The bankruptcy was due to the failure of her husband's family's grocery store (TR at page 18 line 2 to page 19 line 15). Federal tax liens for tax years 1992~1995 have been filed against the Applicant and her ex-spouse (GX 3~6). The Applicant thought her ex-spouse had filed these tax returns, returns she had signed; but, in fact, he did not file the returns (TR at page 19 line 16 to page 20 line 8, at page 20 line 17 to page 22 line 18, and at page 24 lines 9~24). The Applicant's ex-spouse admits his culpability, and the IRS views the Applicant as an "Innocent Spouse" (TR at page 32 lines 2~21, and Applicant's Exhibits (AppXs A and B). As a result, the IRS only requires her to pay \$25 each month towards tax liens totaling in excess of \$83,000 (TR at page 32 lines 2~21, and AppX A).

### Guideline E - Personal Conduct

2.a. When the Applicant executed her July 2003 SCA, she answered "No" to question 36 (GX 1 at page 7). The posited question asks, in part, "In the **last 7 years**, have you had a lien placed against your property for failing to pay taxes . . . ?" (*Id*, emphasis supplied). She thought the tax liens had been filed more than seven years prior, as the last lien referred to tax year 1995, which should have been filed more than seven years prior to her executing the SCA (TR at page 25 line 25 to page 29 line 15, and at page 33 lines 11~21). [It is unclear from the record exactly when the tax liens were filed.]

2.b. The Applicant violated her employer's rules in 2002 by monitoring an ex-boy friend's phone calls for a week in 2002 (TR at page 29 line 16 to page 32 line 1). Many of her co-workers know of this violation of her employer's rules, as does her ex-boy friend (TR at page 32 to page 33 line 10, and at page 33 line 22 to page 34 line 3).

## Mitigation

Thirty four individuals who supervise and/or work with the Applicant think most highly of her (AppXs C and D). They have no reservations about recommending the Applicant for a position of trust (*Id*).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, 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 that is speculative or conjectural in nature.

The Government must make out a case under Guidelines E (Personal Conduct), and F (Financial Considerations); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Unacceptable Personal Conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

## CONCLUSIONS

Considering first the Applicant's Financial Considerations, the first and arguably the third disqualifying conditions are applicable as the Applicant had a "history of not meeting [her] financial obligations," and there was an "[i]nability or unwillingness to satisfy [her] debts." However, the Applicant's financial difficulties can be directly attributed to circumstances "largely beyond . . . [her] control (e.g., . . . a business downturn . . .)." The third mitigating condition is therefore applicable. Furthermore, the Applicant, by filing for and receiving the protection of an "Innocent Spouse" vis-a-vis the tax liens, has addressed all of the alleged past due debts. The last mitigating condition is therefore applicable, as she has "initiated a good-faith effort to repay overdue creditors or **otherwise resolve debts**" (Emphasis supplied). Mitigation is shown. Guideline F is found for the Applicant.

As to her alleged wilful falsification, I can find no intent to keep information from the Government. When the Applicant filled out her SCA, she reasonably thought that the tax liens had been filed more than seven year prior to executing the SCA. The Applicant's trustworthiness is attested to by those with whom he works. She therefore answered the posited questions truthfully and to the best of her ability. As to the rule violation in recording another employee's phone calls, this is not a "pattern" of "rule violations," as required by the fifth disqualifying condition. However, the fourth disqualifying condition is arguably applicable, as this "[p]ersonal conduct . . . increases an individual's vulnerability to

coercion, exploitation or duress . . ." This is countered, however, by the fifth mitigating condition. By telling others in her work place, to include her ex-boy friend, of her malfeasance, she "has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress." Guideline E is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding her Financial Considerations, and her Personal Conduct. The Applicant has thus met the mitigating conditions of Guidelines E and F, and of Section E.2.2. of the Directive. Accordingly, she has met her ultimate burden of persuasion under Guidelines E and F.

## FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

### Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.

### Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

## **DECISION**

In light of 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.

Richard A. Cefola

Administrative Judge