

KEYWORD: Financial Considerations; Criminal Conduct; Personal Conduct

DIGEST: Applicant owes approximately \$35,928 to the Internal Revenue Service for tax years 1995, 1996, 1997, 1998, 1999, and 2001. He has paid off a state tax lien and three other delinquent accounts. Although he has retained an accountant to assist with resolving his federal tax problems, security concerns about his financial situation remain since the tax debt remains outstanding. Clearance is denied.

CASE NO: 04-10339.h1

DATE: 06/21/2006

DATE: June 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-10339

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes approximately \$35,928 to the Internal Revenue Service for tax years 1995, 1996, 1997, 1998, 1999, and 2001. He has paid off a state tax lien and three other delinquent accounts. Although he has retained an accountant to assist with resolving his federal tax problems, security concerns about his financial situation remain since the tax debt remains outstanding. Clearance is denied.

STATEMENT OF THE CASE

On June 29, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

In a sworn, written statement, dated July 24, 2005, Applicant responded to the SOR allegations and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's file of relevant material (FORM) on February 23, 2006. The FORM was mailed to Applicant on February 24, 2006, and received on March 1, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response on March 30, 2006. The case was assigned to me on April 20, 2006.

FINDINGS OF FACT

Applicant admits to the factual allegations pertaining financial considerations under Guideline F, subparagraphs 1.a, 1.b, 1.c, and 1.d. Those admissions are incorporated herein as findings of fact. He denies subparagraphs 1.e, 1.f, and 1.g. He denies all the allegations under Guideline E and Guideline J. 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:

Applicant is a 55-year-old security guard employed by a defense contractor seeking to maintain a security clearance. He has held a security clearance since January 1997. [\(2\)](#)

Applicant currently owes the Internal Revenue Service for tax years 1995, 1996, 1997, 1998, 1999, and 2001. The approximate total amount of outstanding federal income taxes is \$35,928. [\(3\)](#) On October 29, 2004, he hired an accountant to assist him in resolving his income tax situation. [\(4\)](#) There is no indication that any tax payments were made towards his tax debt. On March 28, 2006, he hired another accountant to resolve his tax situation. The accountant indicated that while he is confident the matter will be resolved, he cannot estimate when the matter will be resolved. [\(5\)](#) An IRS Form 2848, Power of Attorney and Declaration of Representative, dated March 28, 2006, indicates the new accountant is going to be working on federal income tax issues for tax years 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005. [\(6\)](#)

In April 2002, a \$7,949 lien was filed against the Applicant in April 2002 for delinquent state income taxes. [\(7\)](#) His wages were garnished for taxes owed. [\(8\)](#) The state tax lien was paid off on January 17, 2006. [\(9\)](#)

On January 17, 2003, Applicant submitted a security clearance application. He answered "No" in response to question "36. Your Financial Record - Tax Lien. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" [\(10\)](#)

A credit report, dated May 23, 2005, revealed a state tax lien for \$7,949 which was filed in April 2002 (SOR subparagraph 1.d) and three delinquent accounts. The three delinquent accounts included a \$261.00 charged off credit card account (SOR subparagraph 1.e); a \$1,221 charged off cell phone account (SOR subparagraph 1.f); and a judgment for \$822 (SOR subparagraph 1.g). [\(11\)](#) In his response to the SOR, Applicant provided proof that all three of the delinquent accounts were paid. [\(12\)](#) Applicant denies that he intentionally omitted the state tax lien on his security clearance application. He indicates he answered the questions on his security clearance application to the best of his knowledge and belief. [\(13\)](#)

It is alleged that Applicant intentionally did not file his federal income tax returns for tax years 1995, 1996, 2000, and 2002. Applicant claims his income tax returns have been filed. He has submitted copies of his federal income tax returns for tax years 1995, 2000, [\(14\)](#) and 2002. [\(15\)](#) On May 3, 1999, the IRS notified him that they changed his 1996 account to correct his filing status as married based on information Applicant provided so it appears he filed his 1996 tax return. [\(16\)](#)

Applicant denies falsifying material facts when he claimed that he filed his federal tax returns for 2000 and 2002 in a signed, sworn, statement provided on arch 27, 2003. His 2000 tax returns were prepared on December 4, 2001.⁽¹⁷⁾ There is no evidence in the record that provides a basis for the government to allege that this return was not filed. In his response to the SOR, Applicant indicates he did not intend to mislead and may have meant to say this his taxes were up to date until tax year 2002. His 2002 taxes were not due until April 15, 2003.⁽¹⁸⁾ His tax preparer did not prepare his 2002 federal income tax return until October 28, 2005.⁽¹⁹⁾

A personal financial statement dated March 29, 2002, indicates Applicant and his wife have a total net monthly income of \$4,842. Their total monthly expenses are \$3,788. They have a net remainder of \$964 left over each month.⁽²⁰⁾

Applicant and his wife reported adjusted gross income of \$89,931 on their 1995 federal income tax return.⁽²¹⁾ They reported adjusted gross income of \$104,634 on their 2000 federal tax return.⁽²²⁾ They reported adjusted gross income of \$125,581 on their 2001 federal tax return.⁽²³⁾ They reported adjusted gross income of \$95,901 on their 2002 federal tax return.⁽²⁴⁾ They reported adjusted gross income of \$88,123 on their 2003 federal tax return.⁽²⁵⁾

Applicant has been married to his current wife since March 1995.⁽²⁶⁾ He has two grown children from a prior marriage. He served on active duty in the Air Force from September 1978 to September 1984 and is currently in the Air Force Reserves.⁽²⁷⁾

POLICIES

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."⁽²⁸⁾ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline F, Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. [\(29\)](#)

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. [\(30\)](#)

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. [\(31\)](#)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." [\(32\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(33\)](#) An administrative judge should consider the following factors: (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 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 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. [\(34\)](#)

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. [\(35\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. [\(36\)](#) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. [\(37\)](#)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

Guideline F- Financial Considerations

With respect to Guideline F, the government has established its case. Applicant has had difficulty paying his federal and state income taxes since 1995. He has also incurred a few delinquent debts. He appears to be unable or unwilling to resolve his income tax delinquencies. He owes the IRS for income taxes owed in tax years 1995, 1996, 1997, 1998, 1999, and 2001. The total approximate amount of outstanding taxes is over \$35,000. As such, 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*) are raised in Applicant's case.

Although Applicant has satisfied the delinquent debts in subparagraphs 1.e, 1.f, and 1.g of the SOR, his federal income tax debt remains outstanding. He hired an accountant in 2001 to assist him with resolving these debts. In March 2006, he hired another accountant. However, it does not appear that his tax problems will be resolved in the near future.

Several conditions could mitigate the security concerns raised by Applicant's financial delinquencies. Neither Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1: (*The behavior was not recent*); or FC MC E2.A6.1.3.2: (*It was an isolated incident*) apply. Since his tax debt remains outstanding his debts are recent. His failure to pay his income taxes is not an isolated incident since his tax debt has accumulated over six tax years.

Based on Applicant's adjusted gross income, it does not appear that Applicant's financial situation was the result of circumstances that were beyond his control. As such FC MC 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)*), does not apply. His problems appear to be more due to a lack of organization and focus when pertaining to his income taxes. He has the ability to pay the taxes.

FC MC 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*) does not apply since there is no indication Applicant sought financial counseling. Although he has hired two accountants to assist him in resolving his federal income tax

debt, his significant tax delinquency remains.

His federal tax problems will not be resolved or under control in the near future.

Although Applicant has resolved some of his delinquent debt, I cannot apply FC MC E2.A6.1.3.6: (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) due to the outstanding balance on his federal tax debt. Applicant has failed to mitigate the security concern under Guideline F.

Guideline E - Personal Conduct

The government alleged Applicant deliberately falsified his answer on his security clearance application with respect to question 36 (SOR subparagraph 3.a). I find for the Applicant with respect to this allegation. I find that he did not intentionally falsify his security clearance application. He appears to be very unorganized when it comes to his income taxes. I conclude he left the tax lien off due to oversight rather than any intent to mislead. He did list other financial issues on his security clearance application. Considering this, it is unlikely that he intended to hide his financial problems from the government.

I also find that Applicant did not intend to falsify material facts in a March 27, 2003, signed sworn statement provided to the Defense Security Service by stating that he had filed his federal tax returns for 2000 and 2002. He had filed his 2000 taxes. He had not filed his 2002 income taxes. However, his 2002 income taxes were not due until April 15, 2003. I find for the Applicant with respect to Guideline E.

Guideline J - Criminal Conduct

The government established a prima facie case with respect to the criminal conduct concern. Title 26 United States Code § 7203 states:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, keep such records or supply such information, at the time or times required by law or regulations, shall in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. (38)

Applicant violated Title 26 United States Code § 26 by willfully failing to file his tax returns on time and by failing to pay taxes owed for tax years 1995, 1996, 2000 and 2002. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and CC DC E2.A10.1.2.2: (*A single serious crime or multiple lesser offenses*) apply.

The criminal conduct concern can be mitigated. I find that no mitigating conditions apply to Applicant's case. Although he eventually filed his income tax returns, he still owes taxes for tax years 1995, 1996, 2000 and 2002. He remains in violation of Title 26 United States Code § 26. Although he hired an accountant in 2004 to resolve his tax issues. He provided no information to indicate what actions were taken towards resolving his income tax situation. He hired another accountant on March 28, 2006, but has provided insufficient information to mitigate the criminal conduct concern since it appears the tax debt remains outstanding.

I find for the Applicant with respect to SOR subparagraph 2.e. He did not violate Title 18 U.S.C. § 1001 since he did not intentionally falsify his security clearance application or his March 27, 2003, signed, sworn statement. However, his willful failure to pay his federal income taxes remains a security concern under Guideline J. I find against Applicant under the criminal conduct concern.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has failed to mitigate the security concern raised by the financial considerations concern since he has neglected to pay his federal income taxes since 1995 and has not resolved his tax debt. Therefore, I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance.

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:

Paragraph 1., Guideline F: AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. For Applicant

Subparagraph 1.e. For Applicant

Subparagraph 1.f. For Applicant

Subparagraph 1.g. For Applicant

Paragraph 2., Guideline J: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Subparagraph 2.c. Against Applicant

Subparagraph 2.d. Against Applicant

Subparagraph 2.e. For Applicant

Paragraph 3., Guideline E: FOR APPLICANT

Subparagraph 3.a. For 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 Applicant. Clearance is denied.

Erin C. Hogan

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Item 5, Security Clearance Application, SF 86, signed January 17, 2003.
3. Items 6, 12.
4. Item 4 at 24.
5. Applicant's Response to FORM, dated March 30, 2006, Item # 6.
6. *Id* at Item 7.
7. Item 6 at 3; Item 10 at 1; Item 11 at 2.
8. Answer to SOR.
9. Applicant's Response to FORM, Item 1.

10. Item 5.
11. Item 10, *see also* Item 11.
12. Item 4 at 25-27.
13. Item 4 at 5.
14. Item 4 at 7-8, 29-30.
15. Applicant's Response to FORM, Item 5.
16. Item 4 at 28.
17. Item 4, 29-30.
18. Item 4 at 5-6.
19. Applicant's Response to Form, Item 5.
20. Item 7 at 2.
21. Item 4 at 7.
22. Item 4 at 29.
23. Item 4 at 22.
24. Applicant's Response to Form , Item 5.
25. Item 12 at 11.
26. Item 5, question 8.
27. Item 5.
28. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
29. Directive, ¶ E2.A6.1.1.
30. Directive, ¶ E2.A5.1.1.
31. Directive, ¶ E2.A10.1.1.
32. Directive, ¶ E2.2.1.
33. *Id.*
34. *Id.*
35. Directive, ¶ E3.1.14.
36. Directive, ¶ E3.1.15.
37. Directive, ¶ E.2.2.2.
38. Title 26 United States Code § 7203.

