

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant has not satisfied two federal tax liens totaling more than \$80,000 and a state tax lien for more than \$7,500. He disclosed one federal tax lien on his security clearance application (SF-86), but he intentionally omitted a second federal tax lien, a state tax lien, and ten county tax liens. Security concerns based on financial considerations and falsification of his SF-86 are not mitigated. Clearance is denied.

CASENO: 04-12641.h1

DATE: 02/15/2006

DATE: February 15, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12641

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has not satisfied two federal tax liens totaling more than \$80,000 and a state tax lien for more than \$7,500. He disclosed one federal tax lien on his security clearance application (SF-86), but he intentionally omitted a second federal tax lien, a state tax lien, and ten county tax liens. Security concerns based on financial considerations and falsification of his SF-86 are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On August 10, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to not grant a security clearance to Applicant. 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 Guidelines F (Financial Considerations) and E (Personal Conduct). Under Guideline F, the SOR alleges delinquent debts for federal and state taxes. Under Guideline E, it alleges falsification of the SF-86 by intentionally failing to disclose federal, state, and county tax liens. Applicant answered the SOR in writing on August 28, 2005, and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted all the allegations under Guideline F. In response to the allegations under Guideline E, he admitted his answers on the SF-86 were incomplete, but he denied intentional falsification. Department Counsel submitted the Government's written case on November 22, 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on December 1, 2005 and responded on December 29, 2005. The case was assigned to me on January 23, 2006.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his answer to the SOR and response to the FORM, I make the following findings of fact:

Applicant is a 49-year-old consultant for a defense contractor. He is married and has one child. He has held a security clearance since 1992. [\(1\)](#)

Applicant has not satisfied a tax lien filed against him in April 1998 for about \$7,542 in state income taxes. [\(2\)](#) He also has not satisfied two federal tax liens totaling more than \$80,000 filed against him in August 1999. [\(3\)](#) He has experienced brief periods of unemployment for up to 30 days, but he is currently employed. [\(4\)](#) His personal financial statement executed on June 10, 2004 indicated he had a net monthly remainder of about \$1,397. [\(5\)](#)

Ten county tax liens were filed against his property between April 1998 and April 2002. Eight were satisfied in September and October 2001, and two were satisfied in April 2004. [\(6\)](#)

In his answer to the SOR, Applicant admitted the delinquent taxes. He admitted procrastinating, and he explained he took no action to resolve his tax situation because he often worked away from home and did not have the money to hire an accountant or a lawyer. He stated he intended to obtain a home equity loan and pay the taxes. [\(7\)](#) In his response to the FORM, he repeated his intention to use a home equity loan to resolve his tax delinquencies, [\(8\)](#) but he had not done so by the time this case was submitted for decision.

Applicant disclosed one federal tax lien on his SF-86, but he did not disclose a second federal tax lien, the state tax lien, or ten county tax liens. [\(9\)](#) He did not disclose the county tax liens because he used his credit report to prepare the SF-86 and none of the county tax liens were reflected on the credit report. He knew the liens had been filed, but he did not disclose them on his SF-86 because he was unsure of the details. He believed his disclosure of the large federal tax lien would trigger further inquiry. [\(10\)](#)

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 (App. Bd. Dec. 19, 2002).

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; *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

Guideline F (Financial Considerations)

Under this guideline, "[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 this guideline 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. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3. Applicant's failures to satisfy his federal, state, and county tax obligations establish DC 1 and DC 3.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or were an isolated incident (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant has multiple delinquent debts that are not yet resolved. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. "Even if Applicant's financial difficulties initially arose due to circumstances outside his control, the Judge reasonably could consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties." ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Although Applicant had periods of unemployment for up to 30 days, his personal financial statement reflects a net monthly remainder of almost \$1,400. He admits he has sufficient equity in his home to satisfy the tax liens. He has expressed his intent to obtain a home equity loan and satisfy the tax liens but has not yet done so. I conclude MC 3 is 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). Applicant settled his county tax debts. He promised to resolve his federal and state tax debts with a home equity loan, but he had not done so by the time the case was submitted for decision. MC 6 is not established.

After considering the disqualifying conditions and the absence of mitigating conditions, and evaluating the evidence in

the context of the whole person, I conclude Applicant has not mitigated the security concern based on financial considerations.

Guideline E (Personal Conduct)

Under this guideline, 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. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) applies where there has been a deliberate omission or falsification of relevant and material facts from any personal security questionnaire. Directive ¶ E2.A5.1.2.2.

When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). Applicant disclosed a federal tax lien for \$73,808, but failed to disclose a second federal tax lien, a state tax lien, and ten county tax liens. He admitted he was aware of the undisclosed liens. His only excuse for nondisclosure was that he did not have the details of the undisclosed liens and believed his disclosure of the one large federal tax lien would trigger further inquiry. I conclude DC 2 is established.

Two mitigating conditions (MC) are relevant to this case. MC 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. Directive ¶ E2.A5.1.3.2. MC 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. Directive ¶ E2.A5.1.3.3. Neither condition is established. Applicant's falsification was "recent," and he made no effort to correct the information. He merely waited until security investigators uncovered the information, and then he admitted it.

In light of the disqualifying condition established by the evidence and the absence of mitigating conditions, I conclude Applicant has not mitigated the security concern based on his intentional omission of relevant and material information from his SF-86.

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

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a.: 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. FORM Item 4 at 1, 2, 5, 8-9.
2. FORM Item 6 at 7.
3. FORM Item 3 at 1-2.
4. FORM Item 5 at 2.
5. *Id.* at 5.
6. FORM Item 3 at 3.
7. *Id.* at 1.
8. Response to FORM at 1-2.
9. FORM Item 4 at 9.
10. Response to FORM at 1.