

KEYWORD: Financial

DIGEST: From the mid-1980s until 2005, Applicant incurred significant debt while self employed. In 1995, the Internal Revenue Service filed a tax lien for unpaid taxes. With interest and penalties, this lien totals more than \$26,000. In 2004, the state filed a lien for unpaid taxes in the amount of \$4900. In December 2005, a United States Bankruptcy Court discharged all his debts, except the approximately \$31,000 in tax liens, which remain unpaid. He has not made any effort to pay these liens nor has he developed a repayment plan. He has not mitigated or overcome the government's security concerns based on financial considerations. Clearance is denied.

CASENO: 05-00699.h1

DATE: 03/22/2006

DATE: March 22, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00699

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

From the mid-1980s until 2005, Applicant incurred significant debt while self employed. In 1995, the Internal Revenue Service filed a tax lien for unpaid taxes. With interest and penalties, this lien totals more than \$26,000. In 2004, the state filed a lien for unpaid taxes in the amount of \$4900. In December 2005, a United States Bankruptcy Court discharged all his debts, except the approximately \$31,000 in tax liens, which remain unpaid. He has not made any effort to pay these liens nor has he developed a repayment plan. He has not mitigated or overcome the government's security concerns based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On October 24, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed 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 Applicant. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On December 14, 2005, Applicant submitted a notarized response to the allegations, and requested a hearing.

This case was assigned to me on January 3, 2006. A notice of hearing was issued on January 20, 2006, and a hearing was held on February 10, 2006. Five government exhibits and four Applicant exhibits were admitted into evidence. Applicant testified. The hearing transcript (Tr.) was received on February 16, 2006.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a. through 1.e. of the SOR. ⁽¹⁾ Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 45-year-old sheet metal mechanic for a defense contractor. ⁽²⁾ He has worked for this contractor for almost four years. ⁽³⁾ He served four years in the United States Army. He was discharged with other than honorable conditions after being absent without authority. ⁽⁴⁾ On appeal, his discharge was changed to Under Honorable Conditions (General). ⁽⁵⁾ He completed a security clearance application (SF 86) in July 2003.

Applicant has been married for 26 years. ⁽⁶⁾ He has three children, ages 26, 24, and 19, and a two-year-old grandson. ⁽⁷⁾ His wife is not employed. ⁽⁸⁾ She does provide child care to their grandson when needed. ⁽⁹⁾

From the mid-1980s until 2002, Applicant owned and operated a siding business. ⁽¹⁰⁾ During this time, his income fluctuated, causing serious financial difficulties. ⁽¹¹⁾ In November 1992 and March 1993, he filed for Chapter 13 bankruptcy protection. ⁽¹²⁾ He did restructure his debts and made payments to creditors. ⁽¹³⁾ The bankruptcy petitions were dismissed. ⁽¹⁴⁾

In 1990, Applicant and his sister inherited a house from their father, which Applicant valued at \$60,000 to \$70,000. ⁽¹⁵⁾ He obtained a mortgage of \$20,000 to buy out his sister's share of the house. ⁽¹⁶⁾ He could not make the mortgage payments on the house, and it went to foreclosure in 1995. ⁽¹⁷⁾ At this time, there was equity in the house. ⁽¹⁸⁾ He does not know the sale price of the house. ⁽¹⁹⁾ He never received any money from the sale of the house, and does not know what happened to the excess money. ⁽²⁰⁾

In 1995, the federal government filed a tax lien against him for unpaid taxes. With interest and penalty fees, the lien amount as of April 24, 2005 was \$26,079.⁽²²⁾ None of the proceeds from the sale of his house were used to pay the federal tax lien.⁽²³⁾ The federal government has taken his tax refund for the last three years.⁽²⁴⁾ Four or five years ago, he spoke with an IRS representative about paying his debt.⁽²⁵⁾ He has not talked with anyone since this time.⁽²⁶⁾ The state filed a lien for unpaid taxes on March 10, 2004 in the amount of \$4,900.⁽²⁷⁾ Both tax liens remain unpaid. He has not developed a plan to pay these taxes.

Applicant currently earns approximately \$38,575.00 a year, including overtime.⁽²⁸⁾ His gross monthly pay is approximately \$3,215.00 and his net monthly pay is approximately \$2,334.00. He filed a Chapter 7 Bankruptcy in 2005. His debts, including credit card and medical bills, were discharged on December 30, 2005.⁽²⁹⁾

His current monthly expenses are: rent \$650.00, utilities \$200.00, food \$200.00, car payment \$389.00, clothing \$100.00, miscellaneous expenses \$200.00, and car expenses \$475.00, excluding the car payment, for a total of approximately \$2,000.00.⁽³⁰⁾ His remaining available monthly income is \$334.00. The monthly car expense has been reduced since his 19-year-old son started paying his own car insurance.⁽³¹⁾ Prior to his discharge in bankruptcy, he paid approximately \$315.00 a month on his outstanding debt.⁽³²⁾ At this time, he has no credit cards.⁽³³⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative

guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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⁾ Although the presence or

absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁵⁾ The government has the burden of proving controverted facts.⁽³⁶⁾ The burden of proof is something less than a preponderance of the evidence.⁽³⁷⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽³⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³⁹⁾

No one has a right to a security clearance⁽⁴⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁴¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽⁴²⁾ Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.⁽⁴³⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Financial Considerations - Guideline F: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline F. Applicant has a long history of excessive debt, including a foreclosure on his house. In 1992 and 1993, he reorganized his debt under a Chapter 13 bankruptcy, and then continued to pay his creditors. In 1995, the IRS filed a tax lien for unpaid taxes, and in 2004, the state filed a tax lien for unpaid taxes. Neither tax lien has been paid. In 2005, all of his debts, except the tax liens, were discharged under Chapter 7. Applicant's financial problems clearly fall within the Financial Considerations Disqualifying Conditions E2.A6.1.2.1. (*A history of not meeting financial obligations*) and E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*)

A security concern based on financial problems can be mitigated in several ways., Applicant's debt problems have been ongoing for a number of years, are not recent, and are not an isolated incident. Thus, he has not established a mitigating conditions under Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. and E2.A6.1.3.2. Likewise, his continued lack of a livable income from his business because of poor management skills is not a factor beyond his control. FC MC E2.A6.1.3.3. is not a basis to mitigate in this case.

He has owed federal taxes since 1995. He has not taken any steps to actually pay his back taxes. While he is not unwilling to pay his outstanding tax debt, he has lacked the financial resources to make any payments. By discharging his debts in bankruptcy recently, Applicant has an opportunity to start anew. He has not developed a plan to pay his outstanding taxes with the extra money each month, not has he sought counseling for resolving this problem, thus, he has not established a mitigating factor under FC MC E2.A6.1.3.4. and E2.A6.1.3.6. I conclude that Applicant has not mitigated and overcome the government's security concerns under Guideline F.

Finally, I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. He still owes significant money on back taxes. In the last four years, his employment and income have stabilized, allowing him to continue paying some of his old debt. Nonetheless, he filed for bankruptcy because his debt was too high to manage. He, however, has never made any arrangements to pay his overdue taxes. While his expressed desire to pay the debt is admirable, he has no plan to pay this debt and does not believe he has the financial resources to do so. He has not explained how the excess profit from the sale of his foreclosed property could have been used to pay his tax liens. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to Applicant.

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 (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

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Applicant's Response to SOR, dated December 14, 2005.
2. Government Exhibit 1 (Applicant's security clearance application, dated July 29, 2003) at 2; Tr. at 40.
3. Government Exhibit 1, *supra* note 2, at 2; Tr. at 18.
4. Applicant's mother died suddenly around 1982. He was so upset that he did not return to his Army unit for sometime after her funeral. Tr. at 15-16.
5. Government Exhibit 3 (Applicant's answers to interrogatories, signed and dated April 21, 2005) at 5.
6. Government Exhibit 1, *supra* note 2, at 3; Tr. at 15.

7. Government Exhibit 1, *supra* note 2, at 3; Tr. at 17.
8. Tr. at 28-29.
9. *Id.* at 29-30.
10. *Id.* at 16-17; Government Exhibit 1, *supra* note 2, at 2.
11. Tr. at 17-18.
12. *Id.* at 21-22; Applicant's response to SOR, *supra* note 1, at 1.
13. Tr. at 21-22.
14. *Id.*; Applicant's response to SOR, *supra* note 1, at 1.
15. Tr. at 18, 36.
16. *Id.* at 35-36.
17. *Id.* at 23-24, 36.
18. *Id.*
19. *Id.* at 36.
20. *Id.* at 23-24, 36.
21. Government Exhibit 5 (Credit report, dated May 24, 2005) at 1.
22. *Id.*
23. Tr. at 23.
24. *Id.* at 27; Applicant Exhibit C (Applicant's tax returns for 2002, 2003, and 2004).
25. Tr. at 22, 24-25.
26. *Id.* at 24-25.
27. Government Exhibit 5, *supra* note 21, at 1.
28. Applicant Exhibit D (Applicant's one week pay stub, dated December 11, 2005).
29. Tr. at 32; Applicant Exhibit C (Order of the United States Bankruptcy Court, dated December 30, 2005) at 1.
30. Tr. at 43; Government Exhibit 2 (Applicant's signed statement with attachments, dated June 9, 2004) at 4.
31. Tr. at 44.
32. Government Exhibit 2, *supra* note 30, at 4.
33. Tr. at 34.
34. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
35. ISCR Case No. 96-0277 (July 11, 1997) at 2.

36. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
37. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
38. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
39. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
40. *Egan*, 484 U.S. at 531.
41. *Id.*
42. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
43. Executive Order No. 10865 § 7.