

DATE: July 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-01041

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$11,895 in delinquent debt, approximately \$7,874 of which consists of child support arrearages. His delinquent debt and his failure to file state and federal income tax returns from 1996 to 2003 raises concerns under Guideline F. Although he has paid off several debts, other debts remain delinquent and he has not filed his state and federal income tax returns. Criminal conduct concerns are raised based on his failure to file his federal income tax returns and four criminal incidents. I find he did not deliberately falsify his security clearance application. However, he has not mitigated the concerns under Financial Considerations or Criminal Conduct. Clearance is denied.

STATEMENT OF CASE

On October 19, 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. 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. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations; Guideline J, Criminal Conduct; and Guideline E, Personal Conduct.

In a sworn statement dated November 14, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on February 17, 2006. A notice of hearing was issued on March 27, 2006, scheduling the hearing for April 20, 2006. Applicant appeared at the hearing and requested a continuance. I denied his request for continuance since he failed to show good cause for the continuance. ⁽¹⁾ The hearing was conducted as scheduled. The government submitted 12 exhibits that were marked as Government Exhibits (Gov. Ex.) 1-12. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted 21 exhibits that were marked as Applicant's Exhibits (AE) A-U. Applicant Exhibits A-U were admitted without objection. Administrative Notice was taken of three documents which were marked as Administrative Notice documents I-III. The record was kept open until May 4, 2006, for the submission of additional documents. Applicant submitted three additional documents which were marked as AE V, W and X and admitted without objection. The parties agreed to submit written

closing arguments by May 10, 2006. Both parties submitted written closing arguments. DOHA received the hearing transcript (Tr.) on May 15, 2006.

FINDINGS OF FACT

In his SOR response, Applicant admits the allegations in ¶¶ 1.a through 1.d, 2.a through 2.g but denies the allegations in ¶¶ 1.e, 2.h through 2.aa and 3.a through 3.d. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old and is employed as a trainer on survival, evasion and escape techniques with a Department of Defense contractor.⁽²⁾ He submitted a security clearance application on July 24, 2003.⁽³⁾ He currently holds a SECRET security clearance.⁽⁴⁾ He is a high school graduate and has approximately a year and a half of college credit.⁽⁵⁾

On December 31, 2001, he retired from the United States Army at the rank of Staff Sergeant (E-6) after 20 years in the military.⁽⁶⁾ He held a TOP SECRET security clearance while in the Army.⁽⁷⁾ He saw combat in Haiti and in Desert Storm. He earned a Bronze Star in Desert Storm.⁽⁸⁾ During his Army career, he was also awarded a Meritorious Service Medal and an Army Commendation Medal (3rd Award).⁽⁹⁾

He has been married three times. His first marriage ended in divorce on March 28, 1994.⁽¹⁰⁾ A son, currently age 20, was born of the marriage and his first wife had a daughter from a previous relationship. The court ordered him to pay child support for both his son and his step-daughter.⁽¹¹⁾ He married his second wife on April 27, 1997. His second marriage ended in divorce on November 1, 1999. A daughter, currently age 7, was born of the marriage. He is required to pay child support for his daughter.⁽¹²⁾ He married his third wife in November 2005. They have no children.⁽¹³⁾

Applicant's background investigation revealed ten delinquent accounts with a total approximate balance of \$11,895.⁽¹⁴⁾ The accounts included a delinquent account for \$156 (SOR ¶ 2.a); a collection account for \$200 (SOR ¶ 2.b); a \$285 collection account related to past due rent (SOR ¶ 2.c); a \$1,440 charged off credit card account (SOR ¶ 2.d); a \$4,391 delinquent child support account (SOR ¶ 2.e); a \$3,483 delinquent child support account (SOR ¶ 2.f); a \$1,323 federal tax lien for tax years 1995 and 1996 (SOR ¶ 1.g); a \$319 medical collection account (SOR ¶ 2.h); a \$233 medical collection account (SOR ¶ 2.i); and a \$65 medical collection account.

The current status of the debts are:

SOR Paragraph	Debt	Status	Record
2.a	\$156 collection account	Paid	AE F; Tr. at 38; Gov. Ex. 7 at 1.
2.b	\$200 collection account	Paid	AE T; Tr. at 38; Gov. Ex. 2 at 1; Gov. Ex 7 at 1.
2.c	\$285 collection account, past due rent	Paid	AE R; Tr. at 38; Gov. Ex. 7at 1.
2.d	\$1,440 charged off credit card account	Unpaid. No proof of payments.	Tr. at 39; 72; Gov. Ex. 6 at 4; Gov. Ex. 7 at 1.
2.e	\$4,391 child support arrearages.	Paying/wages garnished/current balance uncertain.	Tr. at 39-44; Gov. Ex. 7 at 2; Gov. Ex. 9.
2.f	\$3,483 child support arrearages.	Paying/wages garnished/current balance uncertain.	Tr. at 44; Gov. Ex. 7 at 2.
2.g	\$1,323 federal tax lien for tax years 1995 and 1996.	Unpaid.	Tr. at 45, 73; Gov. Ex. 6 at 7; Gov. Ex. 8.

2.h	\$319 medical collection account.	Unpaid. Denies responsibility.	Tr. at 52; Gov. Ex. 6 at 7; Gov. Ex. 7 at 1.
2.i	\$233 medical collection account.	Unpaid. Denies responsibility.	Tr. at 52; Gov. Ex. 7 at 1-2
2.j	\$65 medical collection account.	Unpaid. Denies responsibility.	Tr. at 52; Gov. Ex. 7 at 1.

Applicant admits that he has not filed federal and state income tax returns for tax years 1996, 1997, 1998, 1999, 2000, 2001, 2002 and 2003. He claims he did not file because he was encountering financial problems as a result of his divorce. He was concerned he would not be able to pay any taxes owed so he did not file his returns. [\(15\)](#) At hearing, he indicated that he contacted a tax consultant to help him with filing his returns. [\(16\)](#) At the close of the record, no evidence was submitted indicating that he took steps towards filing his state and federal tax returns.

Applicant's financial problems began after he first filed for divorce. The court ordered him to provide child support for his step-daughter as well as his son. He and his second wife had difficulty making ends meet because a lot of his take home pay was going towards child support. When they divorced in 1999, he was required to pay child support for his daughter. When he retired from the Army in December 2001, he had difficulty finding suitable employment and was unemployed from January 1, 2002, to June 15, 2003. [\(17\)](#) In 2003, he moved to another city to take care of his mother who had undergone a serious operation and was in poor health. Although he received a military retirement check, it was not sufficient to meet his living expenses as well as his child support obligations. [\(18\)](#)

On June 15, 2003, Applicant started employment with his current company. [\(19\)](#) His current take home pay is approximately \$3,000 a month. His annual income is \$48,000. [\(20\)](#) He did not submit a current budget. His paycheck has been garnished for the child support arrearages. He believes he is now in a situation in which he can start to take care of his debts. [\(21\)](#) He disputes the debts alleged in SOR ¶¶ 2.h, 2.i and 2.j. He claims these are medical bills for his step-daughter. He claims he is not responsible for these debts since she is not his dependent. [\(22\)](#) The record is unclear as to whether he took any formal steps to dispute these debts.

Applicant has a history of minor criminal offenses. In April 1990, he was convicted for writing a worthless check. [\(23\)](#) In June 1990, he was convicted for writing a worthless check. [\(24\)](#) On September 20, 1999, his second wife sought a domestic violence protection order. The order was dismissed. [\(25\)](#) On August 5, 2003, he was sentenced to 30 days in jail for indirect criminal contempt for failure to pay child support. [\(26\)](#) Child support payments are being made through wage garnishment.

It is unclear whether the Applicant is paying the full amount of child support due each month in accordance with his son and his daughter's child support orders.

On his security clearance application submitted in May 2003, Applicant responded "No" to question 26. Your Police Record - Other Offenses which reads,

In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24 or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. [\(27\)](#)

He did not list his charge and subsequent 30-day jail sentence for indirect criminal contempt for failure to pay child support in August 2003. He claims he did not understand the question. [\(28\)](#)

On the same security clearance application, Applicant 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?" He did not list the tax lien that was filed against him for failure to pay taxes owed in 1996 and 1997. He claims he did not deliberately omit his tax lien. He did not understand the question. He also believed that he was not late since

the Notice of Tax Lien indicated he had until 2009 to file.⁽²⁹⁾ A Notice of Federal Tax Lien dated February 20, 2003, indicates that the last day for refiling is September 22, 2009.⁽³⁰⁾

Applicant also answered "No" in response to question "38. Your Financial Delinquencies - 180 Days. In the last 7 years have you been over 180 days delinquent on any debt(s)?" and question "39. Your Financial Delinquencies - 90 Days. Are you currently over 90 days delinquent on any debt(s)?" He did not list his delinquent accounts that are alleged in SOR subparagraphs 2.a, 2.b, 2.c, 2.d and 2.h. He claims he did not recall these debts at the time he filled out his security clearance application. He did not have a credit report with him when he filled out the security clearance application.⁽³¹⁾

Applicant's supervisor wrote a statement on his behalf. He indicates Applicant holds a SECRET security clearance and has never had any security violation issues.⁽³²⁾ Applicant testified that he would never harm or jeopardize the United States government. He has handled classified information throughout his 20 year military career and in his current job. He just wants to provide for his family.⁽³³⁾

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."⁽³⁴⁾ 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.⁽³⁵⁾

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.⁽³⁶⁾

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.⁽³⁷⁾

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."⁽³⁸⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽³⁹⁾ 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.⁽⁴⁰⁾

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.⁽⁴¹⁾ 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.⁽⁴²⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be

resolved in favor of the national security. ⁽⁴³⁾

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. ⁽⁴⁴⁾ It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F, Financial Considerations; and Guideline J, Criminal Conduct.

Financial Considerations

Applicant has incurred approximately \$11,895 in delinquent debt. Under Guideline F, Disqualifying Conditions (FC DC) E2.A6.1.2.1: (*A history of not meeting financial obligations*) and FC DC 3 E2.A6.1.2.3: (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. The majority of the debt consists of child support arrearages for his two children. In addition to the delinquent debt, Applicant admits that he did not file federal and state income tax returns between 1996-2003. A federal tax lien was filed against him for taxes owed in 1996 and 1997. FC DC E2.A6.1.2.2: (*Deceptive illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, or other intentional financial breaches of trust.*) applies with respect to income tax evasion. He admits that he did not file his state and federal tax returns because he was concerned he would not have the money if any taxes were owed.

The security concern under Guideline F can be mitigated. I find Financial Considerations Mitigating Condition (FC MC) E2.A6.1.3.1: (*The behavior was not recent*) does not apply. Although Applicant has paid the debts alleged in ¶¶ 2.a, 2.b, and 2.c, all other debts remain unpaid. He has not filed his federal and state income tax returns for 1996 - 2003. Therefore, I conclude the behavior is recent. I cannot apply FC MC E2.A6.1.3.2: (*It was an isolated incident*) based on his numerous debts and his failure to file his state and federal income tax returns for eight years.

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)*) applies, in part, because Applicant has encountered financial difficulty as a result of his two divorces. Applicant's unemployment for a period of approximately 18 months also affected his financial situation. However, he was not laid off or terminated from his place of employment. He chose to retire from the military and should have prepared for his future after his retirement. In addition, Applicant's period of unemployment does not justify his refusal to file his federal and state income tax returns for over an eight year period. He was on active duty in the military for six of those eight years. For these reasons, I give little weight to the application of FC MC E2.A6.1.3.3.

FC MC E2.A6.1.3.4: (*The person has received or is receiving counseling for the problems and there are clear indications that the problem is being resolved or under control*) is not applicable because Applicant has not received financial counseling. Although he has paid off three of the debts, the other debts remain outstanding. His financial issues are unlikely to be resolved or under control in the near future. FC MC E2.A6.1.3.6: (*The individual initiated a good-effort to repay overdue creditors or otherwise resolve debts*) does not apply because his federal and state income tax returns remain unfiled and he has not taken steps to resolve the delinquent debts alleged in SOR ¶¶ 2.d, 2.g, 2.h, and 2.i.

I find for the Applicant with respect to SOR ¶¶ 1.a, 1.b, and 1.c since he has paid these debts. He has started to make progress in resolving his financial situation but still has a long way to go. A security concern remains under Guideline F. It is too early to conclude that Applicant's financial situation is completely under control. I find against him under Guideline F.

Criminal Conduct

Applicant has a history of criminal conduct. In 1990, he was convicted on two occasions for worthless check offenses. In September 1999, a domestic violence protective order was issued against him. In August 2003, he served 30 days in jail for indirect criminal contempt for failure to pay child support. His intentional failure to file federal income tax returns from 1996 to 2003 violates Title 26 United States Code §7203, a misdemeanor offense. ⁽⁴⁵⁾ The case record supports the application of 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*).

I find none of the mitigating conditions apply under criminal conduct. Since Applicant has not filed his federal income tax returns, his criminal behavior is recent. Therefore, Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1: (*The criminal behavior was not recent*) does not apply. CC MC E2.A10.1.3.2: (*The crime was an isolated incident*) does not apply since he has a history of criminal offenses. Although he has served his punishment for the offenses in ¶¶ 1.a, 1.b, 1.c, and 1.d, he has taken no steps to file his federal income tax returns for tax years 1996 to 2003. I cannot apply CC MC E2.A10.1.3.6: (*There is clear evidence of successful rehabilitation*) since the issue dealing with Applicant's failure to file federal income tax returns over an eight year period remains. I find against Applicant under Guideline J.

Personal Conduct

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

In this case, the record evidence fails to establish Applicant deliberately omitted or concealed information about his criminal history and financial problems. Although his answers to questions 26, 36, 38, and 39 were incorrect, Applicant successfully rebutted the allegations that he deliberately provided a false answer. At hearing, he testified he could not recall his delinquent debts and did not have access to a credit report when filling out his security clearance application. He misunderstood questions 26 and 36. I find his testimony credible. Guideline E is decided for Applicant.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, common sense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In reaching my decision, 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 acknowledge that Applicant honorably served over 20 years in the military and has held a security clearance with no security violations over the past five years in his current position. However, an applicant with a good or even exemplary work history may engage in conduct that has negative security implications. Applicant failed to mitigate the security concerns under Guidelines F and J based on his financial history and his failure to file federal and state income tax returns from 1996 to 2003. 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 J: 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

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: Against Applicant

Subparagraph 2.e: Against Applicant

Subparagraph 2.f: Against Applicant

Subparagraph 2.g: Against Applicant

Subparagraph 2.h: Against Applicant

Subparagraph 2.i: Against Applicant

Subparagraph 2.j: Against Applicant

Subparagraph 2.k: Against Applicant

Subparagraph 2.l: Against Applicant

Subparagraph 2.m: Against Applicant

Subparagraph 2.n: Against Applicant

Subparagraph 2.o: Against Applicant

Subparagraph 2.p: Against Applicant

Subparagraph 2.q: Against Applicant

Subparagraph 2.r: Against Applicant

Subparagraph 2.s: Against Applicant

Subparagraph 2.t: Against Applicant

Subparagraph 2.u: Against Applicant

Subparagraph 2.v: Against Applicant

Subparagraph 2.w: Against Applicant

Subparagraph 2.x: Against Applicant

Subparagraph 2.y: Against Applicant

Subparagraph 2.z: Against Applicant

Subparagraph 2.aa: Against Applicant

Paragraph 3. Guideline E FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

DECISION

In light of all of the circumstances 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. Tr. at 4-10.

2. Tr. at 4-5.

3. Gov. Ex. 1.

4. Tr. at 10.

5. Tr. at 5.

6. AE N.

7. Tr. at 10-11; AE O.

8. Tr. at 78; AE N.

9. AE N.

10. Gov. Ex. 2 at 1.

11. Gov. Ex. 10.

12. Gov. Ex. 2 at 1; Gov. Ex. 3.

13. Tr. at 68.

14. Gov. Ex. 2, 6, 7, and 8.

15. Tr. at 46-50; Gov. Ex. 2 at 4.

16. Tr. at 48-49.

17. Gov. Ex. 1, question 6.
18. Tr. at 32-34; Gov. Ex. 12; AE G; AE P.
19. AE C.
20. Tr. at 78.
21. Tr. at 72.
22. Tr. at 52.
23. Gov. Ex. 5.
24. *Id.*
25. Gov. Ex. 4; AE W.
26. Gov. Ex. 3.
27. Gov. Ex. 2.
28. Tr. at 55.
29. Tr. at 53-54; 75-76.
30. Gov. Ex. 8.
31. Tr. at 54-55; 76-77.
32. AE X.
33. Tr. at 56.
34. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
35. Directive, ¶ E2.A6.1.1.
36. Directive, ¶ E2.A10.1.1.
37. Directive, ¶ E2.A5.1.1.
38. Directive, ¶ E2.2.1.
39. *Id.*
40. *Id.*
41. Directive, ¶ E3.1.14.
42. Directive, ¶ E3.1.15.
43. Directive, ¶ E.2.2.2.
44. Exec. Ord. 10865, § 7.

45. Administrative Notice Document I.