

KEYWORD: Financial ; Criminal Conduct; Personal Conduct

DIGEST: Appellant has a history of financial irresponsibility. In 1996, he filed for Chapter 13 bankruptcy which was dismissed due to his inability to make payments. He owes approximately \$4,337 to 18 different creditors. He owes the Internal Revenue Service approximately \$9,024 and owes approximately \$1,758 in state taxes. He has not filed federal and state income tax returns since 1995. He was prosecuted for writing worthless checks on two occasions. Warrants were issued for his arrest on seven occasions related to his failure to pay restitution on the worthless checks. The debts remain delinquent and his federal and state income tax returns have not been filed. Security concerns remain. Clearance is denied.

CASE NO: 05-01757.h1

DATE: 06/23/2006

DATE: June 23, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01757

DECISION OF ADMINISTRATIVE JUDGE

ERIN C. HOGAN

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Appellant has a history of financial irresponsibility. In 1996, he filed for Chapter 13 bankruptcy which was dismissed due to his inability to make payments. He owes approximately \$4,337 to 18 different creditors. He owes the Internal Revenue Service approximately \$9,024 and owes approximately \$1,758 in state taxes. He has not filed federal and state income tax returns since 1995. He was prosecuted for writing worthless checks on two occasions. Warrants were issued for his arrest on seven occasions related to his failure to pay restitution on the worthless checks. The debts remain delinquent and his federal and state income tax returns have not been filed. Security concerns remain. Clearance is denied.

STATEMENT OF THE CASE

On October 12, 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 J, Criminal Conduct, and Guideline E, Personal Conduct.

In a sworn, written statement, dated November 18, 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 15, 2006. The FORM was mailed to Applicant on February 21, 2006, and received on March 6, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted no response. The case was assigned to me on April 28, 2006.

FINDINGS OF FACT

Applicant admits to all the factual allegations in the SOR. Those admissions are incorporated herein as findings of fact. 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 57-year-old technician employed by a defense contractor who seeks a security clearance. He is married and has five children. From 1969 to 1971, he served on active duty in the United States Army. He did a tour of duty in Vietnam. He separated from active duty at the rank of Sergeant (E-5).⁽²⁾

Applicant has a history of financial problems. In 1982, he filed for Chapter 7 bankruptcy as a result of a failed business.⁽³⁾ In 1996, he filed for Chapter 13 bankruptcy. He listed total assets of \$8,804 and total liabilities of \$89,804.⁽⁴⁾ On May 16, 1997, the bankruptcy judge dismissed his case due to his failure to make payments on the plan.⁽⁵⁾

Currently, Applicant owes the Internal Revenue Service approximately \$9,024 for taxes, penalties and interest. A tax lien was filed against the him in 1994.⁽⁶⁾ In April 1999, a state tax lien was filed against the Applicant for unpaid state taxes in the approximate amount of \$1,758.⁽⁷⁾ He also has 18 unpaid delinquent accounts totaling \$4,337.⁽⁸⁾ He admits to all the debts. He paid off a utility bill (SOR ¶ 1.u).⁽⁹⁾ Of the remaining accounts, 12 of the accounts are unpaid medical bills. Applicant's wife was diagnosed with a long term illness in the early 1990s. Since 1995, she has been confined to a wheel chair and only leaves the house for doctor appointments.⁽¹⁰⁾

Applicant admits that he has not filed federal or state income tax returns since 1995. (He lived in two different states during this time period. They will be referred to as State One and State Two.) He claims he cannot file the tax returns himself and needs the assistance of tax preparer. He cannot afford to pay a tax preparer but hopes to take care of the matter sometime in the future.⁽¹¹⁾ He submitted no documents or other evidence indicating that he filed his state or federal income tax returns.

Applicant has a history of criminal charges related to worthless checks. On May 12, 1985, he was charged with two counts of issuing worthless checks. On April 27, 1987, he was arrested for issuing worthless checks. On February 17, 2001, he was arrested on a felony charge of issuing worthless checks. He was found guilty, fined \$592 and placed on one year probation. On August 29, 2001, a warrant was issued for Consequences of Non-payment. He failed to make restitution on the worthless checks. On January 29, 2002, he was arrested for Consequences of Non-payment. He posted \$280 bond. Warrants for his arrest were issued on July 1, 2002, and July 30, 2002. He was arrested on October 17, 2002, for Consequences of Non-payment. He pled guilty and was sentenced to 365 days in jail, suspended and ordered to pay \$100 a month until his fines and costs of approximately \$1,717.33 were paid. Applicant stopped making payments in January 2003 because he could not afford to make payments. On March 21, 2003, another warrant was issued against him for Consequences of Non-payment.⁽¹²⁾ Applicant offered no evidence that he resolved the issue of the outstanding warrant.

Aside from the worthless check offenses, Applicant was arrested for aggravated assault in 1989. The charge was later dismissed. [\(13\)](#)

On August 16, 2001, Applicant submitted a security clearance application, Standard Form (SF) 86. He answered "No" in response to question 28 which reads:

Your Use of Illegal Drugs and Drug Activity - Use in Sensitive Positions. Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety? [\(14\)](#)

On this same security clearance application, Applicant indicated in response to question "27. Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs" that from 1995 to 1999, he used various prescription drugs. He also indicated that from 1969 to 1999 he used marijuana on various occasions. [\(15\)](#) In response to question "31. Your Investigation Record - Investigations/Clearance Granted," he indicated he held a security clearance in 1969. [\(16\)](#) There is no information in the record to indicate he held an active security clearance after his active duty military service.

In a signed, sworn statement dated August 8, 2003, Applicant explains that he first used marijuana while stationed in Vietnam. He stopped using marijuana in 1971. In the early 1990s, he began to use marijuana again to deal with the stress from his wife's deteriorating medical condition. Around 1995, he began self-medicating with his wife's prescription pills which included Oxycodone, Lorcette and Percocet. In 1999, he voluntarily sought professional help at the Veteran's Administration (VA) for drug and alcohol abuse. While in treatment, he was also diagnosed and treated for Post Traumatic Stress Disorder which was related to his combat duty in Vietnam. He met with a psychiatrist at the VA on regular basis until 2002. [\(17\)](#) He listed his treatment in response to questions 19 and 30 on his security clearance application. [\(18\)](#)

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?" Applicant answered "No." He did not list his federal and state tax lien in response to this question. [\(19\)](#)

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."⁽²⁰⁾ 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.⁽²¹⁾

Guideline J, Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.⁽²²⁾

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.⁽²³⁾

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."⁽²⁴⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²⁵⁾ 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.⁽²⁶⁾

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.⁽²⁷⁾ 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. ⁽²⁸⁾ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. ⁽²⁹⁾

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 difficulty meeting his financial obligations. He filed for bankruptcy on two occasions. He has outstanding federal and state tax liens. He has at least 17 delinquent accounts totaling \$3,984. Between 1985 to 2003, he was prosecuted for worthless checks on two occasions. Between 2001 and 2003, warrants were issued for his arrest for Consequences of Non-payment (i.e. failure to make restitution on his worthless checks). A March 21, 2003, warrant for his arrest remains active. 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*) apply towards Applicant's case based on his history of financial irresponsibility and inability to pay his debts.

FC DC E2.A6.1.1.2: (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*) applies with respect to Applicant's worthless check charges and his Consequences of Non-payment charges. Although not alleged under Guideline F, I took account his failure to file state and federal income taxes since 1995 under the whole person factors.

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*) applies. Applicant has numerous unpaid delinquent debts that remain outstanding.

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, due to the expenses that are incurred as a result of his wife's medical condition. However, it does not fully mitigate the concern under Guideline F. Many of the delinquent debts are for small amounts. There is insufficient information about Applicant's financial income to indicate whether he is capable of paying on at least some of these debts. There is no information about Applicant's monthly income or how much money is left over each month after expenses. His wife's medical condition does not mitigate his failure to pay his federal and state income taxes and his decision to write worthless checks.

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 that Applicant's financial problems will be resolved anytime soon.

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*) since there is no evidence, aside from one paid utility bill (SOR subparagraph 1.u), that Applicant has made any attempts to resolve his delinquent debt. Applicant has failed to mitigate the security concern under Guideline F.

Guideline J - Criminal Conduct

The government established a prima facie case with respect to the criminal conduct concern. Applicant admits to all of the allegations under Guideline J. His willful failure to file his federal income tax returns from 1995 to 2002, violates Title 26 United States Code § 7302. His failure to file his state income tax returns for State One is a criminal violation under state law. He was prosecuted on eight occasions related to worthless checks and Consequences of Non-payment charges. There is an active warrant for his arrest relating for Consequences of Non-payment. He was arrested for aggravated assault on one occasion. His deliberate falsification on his security clearance application by failing to list his federal and state tax liens in response to question 36, violates Title 18, United States Code § 1001. His conduct raises Criminal Conduct Disqualifying Conditions (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 for Applicant regarding his failure to file his state income tax returns for State Two (SOR subparagraphs 1.m, 1.o, and 1.s). The state statute cited by the government is not a criminal violation. However, I considered Applicant's failure to file his state tax returns in State Two under the whole person factors.

The criminal conduct concern can be mitigated. None of the mitigating conditions apply. Applicant has presented no evidence to indicate he has taken steps to file his federal and state income tax returns. He indicated in his August 2003 signed sworn statement that he stopped paying the court restitution payments related to his worthless check charges. This resulted in the warrant being issued for his arrest for Consequences of Non-payment. He provided no additional information to indicate that he has resumed restitution payments or has resolved the issue related to the active warrant for his arrest. Since he has taken no action, his criminal behavior is recent. ⁽³⁰⁾ His criminal conduct cannot be

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considered isolated based on his numerous criminal violations. He has not demonstrated clear evidence of successful rehabilitation since he taken no steps to file his state and federal tax returns and a warrant for his arrest remains outstanding related to Consequence of Non-Payment charges.⁽³²⁾ The security concern raised by Applicant's criminal conduct is not mitigated.

Guideline E, Personal Conduct

The government alleged Applicant deliberately falsified his answer on his August 16, 2001, security clearance application with respect to question 28 (SOR subparagraph 3.a). Although he admits to the allegation in his answer to the SOR, the record evidence indicates he fully disclosed his illegal drug use and the fact that he was granted a security clearance in the past in response to questions 27 and 31 on the same security clearance application. Question 28 asks, in part, whether an applicant had ever used illegal drugs while possessing a security clearance. Even if one were to conclude he deliberately answered "no" to question 28, the falsification is not material since he disclosed this information in response to other questions on the security clearance application. I find Applicant had no intent to falsify his response to question 28. I find for the Applicant with respect to SOR subparagraph 3.a.

Applicant admits to deliberately falsifying his response to question 36 on his security clearance application by failing to list his state and federal tax lien. His conduct supports the application of Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2: (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*).

Considering the Personal Conduct Mitigating Conditions (PC MC), only PC MC E2.A5.1.3.3: (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) has the potential to apply to the facts of this case. I find that it does not apply. Applicant did not disclose his state and federal income tax liens until his interview with Special Agent of the Defense Security Service on August 8, 2003. This is more than two years after he submitted his security clearance application. I cannot conclude his disclosure of the tax liens were prompt. It also appears he was confronted about the tax liens before disclosing them. Therefore PC MC E2.A5.1.3.3 does not apply. I conclude the personal conduct security concern is not mitigated.

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.

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 concerns raised by

the financial considerations, criminal conduct, and personal conduct concerns. 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. Against Applicant

Subparagraph 1.e. Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g. Against Applicant

Subparagraph 1.h. Against Applicant

Subparagraph 1.i. Against Applicant

Subparagraph 1.j. Against Applicant

Subparagraph 1.k. Against Applicant

Subparagraph 1.l. Against Applicant

Subparagraph 1.m. Against Applicant

Subparagraph 1.n. Against Applicant

Subparagraph 1.o. Against Applicant

Subparagraph 1.p. Against Applicant

Subparagraph 1.q. Against Applicant

Subparagraph 1.r. Against Applicant

Subparagraph 1.s. Against Applicant

Subparagraph 1.t. Against Applicant

Subparagraph 1.u. For Applicant

Subparagraph 1.v. Against 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. 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. For Applicant

Subparagraph 2.n. Against Applicant

Subparagraph 2.o. For Applicant

Subparagraph 2.p. Against Applicant

Subparagraph 2.q. Against Applicant

Subparagraph 2.r. Against Applicant

Subparagraph 2.s. For 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 AGAINST APPLICANT

Subparagraph 3.a. For Applicant

Subparagraph 3.b. 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 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 and modified (Directive).
2. Item 3.
3. Item 5 at 3.
4. Item 6.
5. *Id.*
6. Item 7; Item 5 at 5.
7. Item 5 at 5.
8. Item 5; Item 7.
9. Item 5 at 4; Item 7.
10. Item 5 at 2.
11. Item 5 at 8.
12. Answer to SOR; Item 5 at 5-6; Item 3, question #21.
13. Item 5 at 6.
14. Item 3.
15. *Id.*
16. Item 3.

17. Item 5 at 1-3.
18. Item 3.
19. *Id.*
20. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
21. Directive, ¶ E2.A6.1.1.
22. Directive, ¶ E2.A10.1.1.
23. Directive, ¶ E2.A5.1.1.
24. Directive, ¶ E2.2.1.
25. *Id.*
26. *Id.*
27. Directive, ¶ E3.1.14.
28. Directive, ¶ E3.1.15.
29. Directive, ¶ E.2.2.2.
30. Directive, ¶ E2.A10.1.3.1.
31. Directive, ¶ E2.A10.1.3.2.
32. Directive, ¶ E2.A10.1.3.6.