

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant is 53 years old and has been employed by defense contractors since 1998. In early 2000, federal and state taxing bodies filed liens against him for unpaid taxes. Since that time one of the liens has been resolved, but others remain delinquent and unpaid. When he filed his security clearance application in May 2002, he did not disclose the delinquent liens. He failed to mitigate the security concerns raised by his personal conduct and financial considerations. Clearance is denied.

CASENO: 05-01871.h1

DATE: 02/24/2006

DATE: February 24, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01871

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 53 years old and has been employed by defense contractors since 1998. In early 2000, federal and state taxing bodies filed liens against him for unpaid taxes. Since that time one of the liens has been resolved, but others remain delinquent and unpaid. When he filed his security clearance application in ay 2002, he did not disclose the delinquent liens. He failed to mitigate the security concerns raised by his personal conduct and financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On August 19, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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. The SOR detailed reasons under Guidelines F (Financial Considerations) and E (Personal Conduct) why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On September 27, 2005, Applicant filed his Answer and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted some of the allegations in the SOR and denied others. On October 19, 2005, Department Counsel prepared a File of Relevant Material (FORM), and provided Applicant with a complete copy on November 7, 2005. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on November 10, 2005, and did not submit any additional information. The case was assigned to me on December 19, 2005.

FINDINGS OF FACT

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

Applicant is 54 years old and has been employed by defense contractors since 1998. In May 2002, he completed his first security clearance application (SCA).

In September 2000, the Internal Revenue Services (IRS) filed tax liens for \$16,543.00 and \$83.00 against Applicant. As of October 2005, those taxes, alleged in SOR ¶¶ 1.a. and 1.b., remain unpaid. Item 6.

In March 1999, a state tax board filed a \$4,555.81 tax lien against Applicant for unpaid 1996 taxes. He disclosed that lien in the SCA when he answered "Yes" to Question 34. Your Financial Record-Wage Garnishments (*In the last 7 years, have you had your wages garnished for any reasons*). He noted that in April 1999 a state taxing body garnished his wages for \$4,596. Item 4 at 10. In a statement to a government investigator in August 2004, he said that this lien was released. Item 10 at 1. There is no proof in the record to confirm payment and release of the lien. According to the October 2005 Credit Report, the taxes (SOR ¶ 1.c.) remain unpaid. Item 6.

In June 2001, the state filed another lien for \$3,571.57 for delinquent taxes for the years 1997 and 1998. Notice of that lien was mailed to Applicant's current residence. Item 7. That lien was released in January 2003, as noted in SOR ¶ 1.e.

Applicant admitted that he owed a collection agency approximately \$554.00, as alleged in SOR ¶ 1.d. Item 3.

When Applicant signed his SCA in May 2002, he certified his answers were "true, complete, and correct" to the best of his knowledge and belief. 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 answered "No." This answer was false, given his disclosure to Question 34 above.

During an August 2004 meeting with a government investigator regarding his answers to the SCA, Applicant claimed he did not know about the \$16,543.00 owed to the IRS or the \$3,571.00 state lien prior to being informed by the investigator. He said the debts arose from his failure to file income taxes and he intended to pay the taxes as soon as he

reached a settlement amount with the taxing bodies. Item 10 at 1. In his Answer, filed in September 2005, he stated he was attempting to resolve the matters. Item 3.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, sets forth criteria, which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (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.

Granting an applicant's clearance for access to classified information is based on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. Directive ¶ E2.2.2. The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty. Exec. Or. 10865, § 7. Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *Departments of the Navy V. Egan*, 484 U.S. 518, 531 (1988). The Directive presumes a rational connection between past proven conduct under any disqualifying conditions and an applicant's present security suitability. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the position of the government. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); 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 clearance." *Id.*

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline F - Financial Considerations: A security concern may exist when 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.

Guideline E - Personal Conduct: A security concern may exist when 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.

The disqualifying and mitigating conditions, raising either security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

I have considered all the facts in evidence and legal standards, including the "whole person" concept. The government has established a prima facie case for disqualification under Guidelines F and E.

Guideline F: Financial Considerations

Based on the evidence, 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 to this case.

Applicant owes approximately \$21,179.81 in unpaid federal and state taxes, relating to taxes that accrued prior to 2000. He has known about these delinquent federal taxes for some time, and has yet to produce evidence that he has resolved the matters. Although he claims he paid the \$4,553.81 state tax lien, he did not submit proof to confirm its release, and the debt remains on the October 2005 credit report. It is unclear how long the \$554.00 debt has been delinquent, but it must be well over a year as it is owed to a collection agency.

I have also considered all of the Financial Considerations Mitigating Conditions (FC MC), particularly, FC MC E2.A2.1.3.1. (*The behavior was not recent*), and FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or other wise resolve debts*), and conclude neither applies. Applicant's financial indebtedness began in 1996, and continued to the present. Because the debts span several years and some remain unpaid, the conduct cannot be considered to have occurred in the past as required under FC MC E2.A2.1.3.1. Furthermore, there is no documentation to indicate that he has taken any steps or made a good-faith effort to resolve his outstanding federal taxes over the course of the last couple years while this application has been pending. The \$4,553.81 tax lien is being paid through a garnishment proceeding and not as a result of an affirmative act on his part. Thus, his conduct cannot be construed to fall within the requirements of FC MC E2.A2.1.3.6. Accordingly, Applicant has not mitigated the security concerns based on financial considerations. I find for Applicant on the debt that was paid through garnishment. Guideline F is decided against Applicant.

Guideline E: Personal Conduct

Based on the evidence, 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*) applies. Although Applicant claims he did not know of the outstanding tax liens when he filed his SCA in May 2002,

his assertion is not credible in view of his disclosure in the SCA that a state tax board began garnishing his wages in 1999 for the \$4,553.81 owed, and the notice of the state tax lien for \$3,571.57 was mailed to his present address in June 2001. He also knew that he had not filed or paid taxes for a time period preceding the September 2000 liens.

I considered all of the mitigating conditions under Guideline E, especially, Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2. (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), and conclude it does not apply. Although the falsification occurred in 2002, it was not corrected until Applicant was confronted with the information at a 2004 meeting, despite his knowledge that the \$3,571.57 tax lien was released in January 2003 as the result of a garnishment that began in 1999.

For the reasons stated, I conclude Applicant is not eligible for access to classified information.

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 as follows:

Paragraph 1: Guideline F (Financial Considerations) AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: For the Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

DECISION

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

Shari Dam
Administrative Judge