

DATE: October 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-02502

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes state and federal tax authorities approximately \$35,000 for tax years 2000 through 2004. He belatedly filed state and federal income-tax returns for these years in June 2005. He failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the security concern under Guideline F. Clearance is denied.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's preliminary decision to deny or revoke his eligibility for a security clearance. Acting under the relevant Executive Order and DoD Directive, [\(U\)](#) on September 30, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F for financial considerations and Guideline E for personal conduct. In a response dated October 7, 2005, and a letter dated November 2, 2005, Applicant replied to the SOR and requested a hearing.

On December 16, 2005, the case was assigned to Administrative Judge Barry M. Sax who scheduled the case for hearing on March 23, 2006. At Applicant's request, the case was continued until May 30, 2006. A few days before the hearing, Applicant indicated that he no longer desired a hearing and requested a decision based on the written record. The basis for his request was that he had recently been diagnosed with social phobia disorder and found it too difficult to attend a hearing. Judge Sax granted the request in an order dated June 5, 2006.

On June 13, 2006, department counsel submitted her written case consisting of all relevant and material information that could be adduced at a hearing. This so-called file of relevant material (FORM) was mailed to Applicant and it was received by him on June 28, 2006. Applicant did not submit any information or objections within the 30-day period after receiving the FORM. The case was assigned to me August 14, 2006.

FINDINGS OF FACT

In his response to the SOR, Applicant admits the factual allegations under both security guidelines. His admissions are incorporated herein. In addition, I make the following findings of fact.

1. Applicant is a 38-year-old employee of a contractor of the Defense Department. He works as a systems engineer. He has worked for the same company since April 1995. His security-clearance application indicates that he was granted a top-secret clearance in 1997.
2. He married in 1989 and divorced in 1998. He and his spouse had two children, a son born in 1991 and a daughter born in 1992.
3. His security-clearance application indicates he served on active duty in the U.S. Navy from August 1986 to September 1994 when he was honorably discharged. He was discharged at the pay grade of E-5. There is no other record evidence concerning Applicant's military service.
4. Applicant owes approximately \$35,000 to state and federal tax authorities for tax years 2000, 2001, 2002, 2003, and 2004. His federal income-tax debt is about \$25,000, and his state income-tax debt is about \$10,000.
5. In July 2002, the state tax authority filed a tax lien against Applicant due to money owed for tax year 1999. Likewise, in December 2003, another state tax lien was filed against Applicant due to money owed for tax years 2000 and 2001.
6. Applicant did not timely file state and federal income-tax returns for tax years 2000 - 2004. With the assistance of a tax preparer, Applicant filed his returns in June 2005. Review of the returns confirms that he owes approximately \$35,000 to state and federal tax authorities.
7. In July 2005, Applicant responded to interrogatories sent to him by DOHA. In addition to providing copies of the state and federal income-tax returns, he provided information about his financial situation. First, concerning his tax debt, he was unable to provide documentation that he had satisfied the debt in full or was making scheduled payments. But he did state that his intent was to submit payment plans to both state and federal tax authorities that included a sizeable down payment to each along with monthly payments. Other than the proposed plan, there is no other record evidence showing what action, if any, Applicant has taken to address his tax debt. Second, Applicant explained that he had trouble with his financial affairs after his divorce due to the change in his financial situation and the emotional upheaval tied to the divorce. He also indicated he was assuming responsibility for resolving his financial affairs. Third, in response to the interrogatories, he completed a personal financial statement. His monthly expenses reveal that he is not paying either alimony (sometimes called spousal support) or child support.
8. There is no record evidence concerning Applicant's employment record, job training, or constructive community involvement.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.⁽²⁾ A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁽³⁾ Instead, it is a determination that the applicant has not met the strict guidelines the President has established for granting eligibility for a security clearance.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ There is no presumption in favor of granting or continuing access to

classified information. (5) The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. (6) An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven. (7) In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (8)

No one has a right to a security clearance. (9) And as noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." (10) Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

1. The Financial Considerations Security Concern

Under Guideline F, (11) a security concern typically exists for two different types of situations--significant unpaid debts or unexplained affluence. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

Here, based on the record evidence as a whole, a security concern is raised under the guideline. Applicant has a history of not meeting financial obligations as well as inability or unwillingness to pay just debts. (12) The record evidence shows a pattern of Applicant not fulfilling his state and federal income-tax obligations. At present, he owes about \$35,000 and does not have a plan firmly in place with state and federal tax authorities to resolve his indebtedness.

I reviewed the MC under the guideline and conclude none apply in his favor. Applicant has not presented sufficient evidence, including documentary evidence, to support application of any of the MC under the guideline. While I accepted his statement that his 1998 divorce had a detrimental effect on him, he did make his case by showing how his divorce resulted in him being unable to file tax returns and pay income taxes. In this regard, I note that many people who go through a divorce are still able to fulfill their tax obligations.

2. The Personal Conduct Security Concern

Personal conduct under Guideline E (13) is 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. An unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Here, based on the record evidence as a whole, a security concern is raised under the guideline. Applicant's failure to file state and federal tax returns for five years indicates an unwillingness to comply with rules and regulations. (14)

I reviewed the MC under the guideline and conclude none apply given the facts here. Nevertheless, Applicant has mitigated the concern by filing the returns in question. By doing so, he has shown that he is willing to comply with rules and regulations.

3. The Whole-Person Concept

I considered the available information in light of the whole-person concept. Applicant is a 38-year-old man who has been continuously employed by the same company for more than ten years, including the tax years in question. (15) His age and long-term employment do not help explain, extenuate, or mitigate his tax problems. Likewise, the nature of his indebtedness is unhelpful--owing \$35,000 in delinquent taxes is a serious matter, more serious than running up credit card debt, for example. (16) Although there is no evidence that his tax problems arose from gambling, substance abuse, or other conduct that would increase security concerns, Applicant had to know he was not fulfilling his state and federal

income-tax obligations. ⁽¹⁷⁾ Despite his knowledge, there were years of inaction. Finally, absent here is any reliable information to establish that he has a plan firmly in place with state and federal tax authorities to resolve his indebtedness. ⁽¹⁸⁾ Simply put, his good intentions to pay are not enough. Considering the record evidence as a whole, I conclude Applicant failed to present sufficient evidence to rebut, explain, extenuate, or mitigate the security concern arising under Guideline F. Applicant did resolve, however, the Guideline E concern by filing the income-tax returns. To conclude, he has not met his ultimate burden of persuasion to obtain a favorable clearance decision.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR Paragraph 1-Guideline F: Against Applicant

Subparagraphs a-e: Against Applicant

SOR Paragraph 2-Guideline E: For Applicant

Subparagraph a: For 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.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Directive, Item E2.2.1.
3. Executive Order 10865, § 7.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
6. Directive, Enclosure 3, Item E3.1.14.
7. Directive, Enclosure 3, Item E3.1.15.
8. Directive, Enclosure 3, Item E3.1.15.
9. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).
10. 484 U.S. at 531.
11. Directive, Enclosure 2, Attachment 6 (setting forth the disqualifying and mitigating conditions).
12. Directive, Item E2.A6.1.2.1. A history of not meeting financial obligations; Item E2.A6.1.2.3. Inability or

unwillingness to satisfy debts.

13. Directive, Enclosure 2, Attachment 5 (setting forth the disqualifying and mitigating conditions).

14. Directive, Item E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

15. Directive, Item E2.2.1.4. The individual's age and maturity at the time of the conduct.

16. Directive, Item E2.2.1.1. The nature, extent, and seriousness of the conduct.

17. Directive, Item E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation.

18. Directive, Item E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes.