

DATE: October 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-09070

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Ray Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 61 years old and works for a federal contractor. In 1995 he was notified by a state taxing body that he owed additional income tax for a matter related to a prior divorce. After contacting the state in 1995, he believed the matter had been resolved. However, a tax lien appeared on a 2004 credit report regarding it. He mitigated the security concerns raised by financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On January 12, 2004, and November 1, 2005, Applicant submitted a security clearance application (SCA). On December 12, 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 Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons under Guideline F (Financial Considerations) 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 January 5, 2006, Applicant filed his Answer and elected to have the case decided on the written record in lieu of a hearing. On June 26, 2006, Department Counsel prepared a File of Relevant Material (FORM) containing seven Items. The FORM was mailed to Applicant on July 14, 2006, and received on July 25, 2006. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On September 5, 2006, he submitted additional documents to which Department Counsel did not object. I marked the additional documents as Item 8. On September 12, 2006, the case was assigned to me.

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 61 years old and works for a defense contractor. He is divorced and has five grown children. He divorced his first wife in 1987, and his second wife in 1995. He served in the United States Navy from September 1963 to August 1985 and left with an Honorable Discharge. His last rank in the Navy was Lieutenant Commander (04). He has worked for federal contractors for the past ten years, and his current employer since February 2001. In 1993 he received a top-secret security clearance. (Item 4)

In September 2004, Applicant met with a government investigator to discuss matters in his SCA, including, a state tax lien listed in an April 2004 credit report for \$12,172 reportedly filed in 1996. (Items 5 and 6). The lien is for unpaid state taxes relating to deductions he took on 1990 and 1991 state income tax returns for alimony paid to his first wife while living in that state from 1989-1992. (Item 5 at 4) According to a Notice of State Income Tax Due, dated April 18, 1995, he owed a \$3,207.08 tax deficiency for the years 1990 and 1991. (Item 8 at 5)

After receiving the lien notice, Applicant submitted a response to the state in June 1995. In it he explained he did not owe the monies because he was authorized to take the alimony deduction through the divorce decree and noted his former wife had moved out of state, which may have caused tax confusion in his return. (Item 8 at 6-10) He thought the matter was resolved because he did not hear from the state after sending the information in 1995. (*Id.* at 3) The IRS allowed the deduction on his federal income tax return. (*Id.* at 6) The lien was also listed on a November 2005 credit report. (Item 7)

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.*

CONCLUSIONS

I considered all facts in evidence and legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR.

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. The Government established a potential case for disqualification under this guideline. Based on the evidence, Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*) applies. Applicant has failed to resolve a debt alleged by a state taxing body.

The Government having established a potential disqualification, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing all of the mitigating conditions, I conclude three apply: (1) Financial Consideration Mitigating Condition (FC MC) E2.A6.1.3.1 (*The behavior was not recent*); (2) FC MC E2.A6.1.3.2 (*It was an isolated incident*); and FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The state tax lien, filed in April 1996, is ten years old and the only allegation contained in the SOR. Subsequent to learning of the issue, Applicant wrote to the state in June 1995 disputing the disallowed deduction and attempted to resolve the problem. Since he did not hear from the state again and the IRS allowed the deduction, he believed the matter was closed, which was a reasonable conclusion. He had no knowledge of the lien until he met with the government investigator in 2004.

The Whole Person Concept

In addition to evaluating the disqualifying and mitigating conditions, I considered the totality of the evidence in this case, including Applicant's 61 years of age, his twenty years of military service and more than ten years of working for federal contractors, as well as his prior top secret clearance. I also considered that the old tax lien is the only financial problem alleged in the SOR, and one which he tried to resolve when he learned of it in 1995. While it may be prudent of him to investigate and resolve the issue, it has not created a security issue for him in the past, nor is it anticipated that it will in the future. "[A] security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, a security adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility." *See* ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003). There is insufficient evidence to question his judgment, reliability or trustworthiness on the basis of two disputed tax deductions from 1990 and 1991. Accordingly, Applicant mitigated the security concerns raised by financial considerations. Guideline F is decided for him.

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) FOR APPLICANT

Subparagraph 1.a: For Applicant

DECISION

In light of all the circumstances and evidence presented in this case, it is clearly consistent with the national interest to grant a security clearance to Applicant. Clearance is granted.

Shari Dam

Administrative Judge