

DATE: January 18, 2007

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-14192

DECISION OF ADMINISTRATIVE JUDGE

NOREEN A. LYNCH

APPEARANCES

FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant owes approximately \$35,000 in outstanding tax obligations to the federal and state government. His tax liens date from 1994 until 2005. He has not made any effort to pay these liens nor has he developed a repayment plan. He is paying his child support arrearage of \$13,000. He has not mitigated or overcome the government's security concerns regarding his security eligibility based on financial considerations. Clearance is denied.

STATEMENT OF THE CASE

On February 20, 2004, Applicant submitted a security clearance application. On January 31, 2006, 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 detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline F (Financial Considerations) of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. In a sworn statement, dated April 25, 2006, Applicant responded to the SOR allegations and requested a hearing.

This matter was assigned to me on November 22, 2006. A notice of hearing was issued on December 1, 2006, scheduling the hearing for December 18, 2006. The hearing was conducted as scheduled. The government submitted three exhibits that were marked as Government Exhibits (GE) 1-3. The exhibits were admitted into the record without objection. Applicant submitted three exhibits which were marked and admitted into evidence as Applicant Exhibits A through C.⁽²⁾ The exhibits were admitted without objection. Applicant testified in his own behalf. DOHA received the hearing transcript (Tr.) on December 28, 2006.

FINDINGS OF FACT

Applicant admitted the allegations under Guideline F 1.a. through 1.h. He denied 1. i., and 1.j. as to the amount of the

debt. (3) Those admissions to the allegations in the SOR, are incorporated as findings of fact. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 59-year-old employee of a defense contractor who graduated from high school in 1965. He enlisted in the U.S. Marine Corps in 1967, and was honorably discharged in 1970. (4)

As a disabled veteran, he receives a monthly pension of \$364. Veterans' benefits financed his undergraduate degree in 1978. He expects to complete the Executive Master of Business Administration program in 2007. He was granted a security clearance in 1975. (5)

Applicant married in 1969. As a result of that marriage, he had three children. Two of his children died. The remaining child is disabled. The first marriage ended in 1979. His second marriage ended in divorce in 1988. He has two children from that marriage. His third marriage lasted from 1991 until 1995. (6)

As a result of the divorces, Applicant had child support obligations since 1988. He paid approximately \$1,000 a month in child support for the children from his second marriage. (7) He was current with child support in one state but fell behind in the state of Maryland in October 1988. The children are now emancipated. However, Applicant has a child support arrearage. Since 2002, he has paid \$357 a month toward a current arrearage of approximately \$12,518. The arrearage listed in the SOR was \$18,604. Applicant has reduced his arrearage in the past years from \$30,000 to the current amount. (8)

Applicant worked for the federal government as a guard from 1970 until 1975. He left the federal government to work for a private company as an auditor until 1978. After that, he worked for another company until 1986. In 1986 he had a full time job with an engineering firm, but was then unemployed for approximately two years. He worked on an independent basis after that. His income dropped from \$50,000 to \$25,000 in 1988. From that time, he worked on a temporary basis for various companies or as an independent contractor. (9) At times he had no income. In 1990, he worked as a consultant for one year. His work was sporadic after that until 1995. He had a full time position which lasted until 1996. He did not have another full time job until 2000, but worked from 1997 on a contractual basis. Since 2002, he has been an independent contractor. However he lists his position as a senior auditor for a defense contractor since 2004 to the present on his security application. His work has not required him to have a security clearance. (10)

In 1992, Applicant first had difficulties paying his taxes. (11) He had no money to pay his taxes as well as the child support. He made a decision to pay child support when he could, and allow the taxes to remain unpaid. He contacted the IRS a few years ago, and explained his situation. The tax liens increased in amount, and he currently owes between \$25,000 and \$35,000 in unpaid tax bills. He claims his tax liens are in a suspense account, and lets the IRS know when he can make any payments. Thus far, he has not made any payments due to lack of money. He produced no evidence to support his contention. He expects to address the tax issue in 2007, if he gets the full time contractor job and has a stable income. He has not settled with the IRS because he cannot commit to a certain amount. (12)

For many years, Applicant borrowed money from family and friends for three or four months a year to make ends meet. He still does this and did not disclose the amount he owes. (13) When he works, he pays his family and friends. His current income is between \$3,000 and \$4,000 a month (gross). His monthly expenses are approximately \$2,500. His net remainder varies. On his security application he lists his position as a senior auditor with the defense contractor from 2004 until the present.

In December 2006, Applicant paid the collection account listed in SOR, ¶ 1.j. (14) He is current with his other bills and taxes. He denies a license suspension for child support at any time. He is now paying monthly on his child support arrearage and has lowered the amount significantly since the issuance of the SOR.

Applicant has diabetes but his health is good and does not prevent him from his work. He believes age discrimination is the cause for the sporadic employment. He also states that he has difficulty keeping a job because once he gets a company on a sound financial track, they no longer need him and he has to find another job. (15)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁶⁾ The government has the burden of proving controverted facts.⁽¹⁷⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁰⁾

No one has a right to a security clearance⁽²¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²³⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁴⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F - Financial Considerations: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F Financial Considerations

The government has established its case under Guideline F. Applicant has a history of unpaid federal and state tax liens since 1994. He has a child support arrearage. Financial Considerations Disqualifying Condition (FC DC) E.2.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.

A security concern based on financial problems can be mitigated in several ways. Applicant's debt problems have been ongoing for a number of years, and are not recent. He admits borrowing money from family and friends three or four months a year. Thus, he has not established a mitigating condition under Financial Mitigating Conditions (FC MC) E2.A6.1.3.1. (*the behavior was not recent*).

Applicant incurred his debt partly as a result of his divorces and change in tax status. He also had child support to pay

for his children. His employment has been sporadic over the years. While, FC C E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control*) applies in part, it is not determinative. While his divorce, child support, and sporadic employment are events partially beyond his control, they occurred a long time ago. His second divorce and child support stem from 1988. This does not explain or justify why he did not pay anything on his long overdue taxes.

He has not received counseling for his financial problems. Since receiving the SOR, Applicant paid his one delinquent account. Applicant is an auditor and is aware of his financial problems, but he still owes approximately \$35,000 for federal and state taxes, with penalties and interest accruing. He made a conscious choice not to pay his federal and state taxes on an annual basis. Even after the IRS filed tax liens against Applicant, giving him notice of indebtedness, Applicant made no effort to resolve his tax issues. Since 2002, he is current on the child support arrearage, but there is a substantial amount of debt remaining. FC MC E2.A6.1.3.4 (*the person has received financial counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

Whole Person Analysis

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's judgment and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the Directive guidelines that were generally applicable or might be applicable to the facts of this case. Applicant is a veteran who served his country. However, Applicant still owes significant money on back taxes. He chose not to pay the taxes and address the child support arrearage. He acknowledges borrowing money from family and friends when he does not work. His income is sporadic. I am not persuaded by the totality of the evidence that Applicant has shown that he will pay his overdue tax debt. He has not yet developed a repayment plan. While his expressed desire to pay in 2007 if he gains stable employment is admirable, this is not sufficient. Under the whole person concept, I conclude that Applicant has not sustained his burden of proof in demonstrating his eligibility to hold 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: For Applicant

Subparagraph 1.j: 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.

Noreen A. Lynch

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. Applicant Ex. A is a Response to guidelines, dated December 18, 2006; Applicant Ex. B is a receipt from cable, dated December 21, 2006; Applicant Ex. C is a Child Support Enforcement payment history, dated September 1, 2006.
3. Applicant's response to the SOR, dated April 25, 2006.
4. Government Ex. 1 (Security Clearance Application (SF 86)), dated December 6, 2004 at 1-8.
5. *Id.*
6. Tr.37, 38. 39.
7. Tr. 40.
8. Applicant Ex. C; and Tr. 41
9. Tr. 52.
10. Tr.41-53.
11. Tr.54.
12. Tr. 55.
13. Tr.58.
14. Applicant Ex. B.
15. Tr. 58.
16. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
17. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
21. *Egan*, 484 U.S. at 531.
22. *Id.*
23. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

24. Executive Order 10865 § 7.