

DATE: August 31, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-14601

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a remaining overdue debt to the Internal Revenue Service (IRS) of approximately \$13,000, which he is in the process of attempting to resolve. Since Applicant incurred this debt in 1995 and 1996, he has been and remains current on all of his other debts, and he has demonstrated a stable and mature outlook about his finances. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On April 28, 2006 the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In a signed and sworn statement, dated May 24, 2006, Applicant responded in writing to the SOR allegations (RSOR), and he requested a clearance decision based on a hearing record.

The case was assigned to this Administrative Judge on June 16, 2006. A Notice of Hearing was issued to the parties on June 29, 2006, and the hearing was held on July 18, 2006.

At the hearing, Department Counsel offered three documentary exhibits (Exhibits 1-3) and no witnesses were called. Applicant appeared without counsel, offered 11 documentary exhibits (Exhibits A through K) and offered his own testimony. The record was held open until August 15, 2006, to allow Department Counsel and Applicant to offer post hearing exhibits. Department Counsel submitted statutes from the Internal Revenue Code and excerpts from the IRS manual. This was marked as Exhibit 4. Applicant offered a series of letters and other documents, which have been identified as Exhibit L. All documentary evidence was entered into evidence without objection. The transcript (Tr) was received on July 25, 2006.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contained four allegations, 1.a. through 1.d., under Guideline F. Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as Findings of Fact. As a result of evidence introduced during the hearing, the SOR was amended to add an additional allegation, 1.e. Applicant admitted this allegation as well.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the live testimony and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is 55 years old. He is married, and he has one daughter. Applicant is employed as a Computer Technician by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline F - Financial Considerations)

The amended SOR lists five overdue debts of Applicant, 1.a. through 1.e., under Adjudicative Guideline F. They will be discussed in the order that they were listed in the SOR: 1.a. This debt, listed in the SOR in the amount of \$2,568.45, is for the tax period ending December 31, 1992. A federal tax lien was placed against Applicant for this debt in October 1997. Applicant testified that he was informed by the IRS that this debt was now past the ten year collection statute limitation date, and therefore he did not owe anything on this debt. An Account Transcript from the IRS shows that there is zero balance for tax year 1992 (Exhibit G).

1.b. This debt, listed in the SOR in the amount of \$1,059.39, is for the tax period ending December 31, 1993. A federal tax lien was placed against him for this debt in October 1997. Applicant was informed by the IRS that this debt was now past the ten year collection statute limitation date, and therefore he did not owe anything on this debt. An Account Transcript from the IRS shows that there is zero balance for tax year 1993 (Exhibit G).

1.c. This debt, listed in the SOR in the amount of \$3,042.04, is for the tax period ending December 31, 1994. A federal tax lien was placed against him for this debt in October 1997. Applicant was informed by the IRS that this debt was now past the ten year collection statute limitation date, and therefore he did not owe anything on this debt. An Account Transcript from the IRS shows that there is zero balance for tax year 1994 (Exhibit G).

1.d. This debt, listed in the SOR in the amount of \$4,343.08, is for the tax period ending December 31, 1995. A federal tax lien was placed against him for this debt in October 1997. An Account Transcript from the IRS shows that the balance for tax year 1995 is \$7,006.28 (Exhibit H).

1.e. This debt, listed in the amended SOR in the amount of \$6,019.24, is for the tax period ending December 31, 1996. A federal tax lien was placed against him for this debt in October 1997. An Account Transcript from the IRS shows that the balance for tax year 1995 is \$6,019.24 (Exhibit I).

In addition to the above debts, Applicant was informed by the IRS that he owed approximately \$56 for tax year 1997. He paid \$60, and has resolved that debt.

At the hearing, Applicant testified that he timely filed a tax return for each of the years, 1992 through 1997, but these debts, 1.a. through 1.e., were assessed against him by the IRS, because he was not having enough withheld to pay the full amount of the tax.

Because of financial hardships he was only to make payments of \$25 a month from June 2000 through May 2001, when he was advised by the IRS that his debts were considered uncollectible (Exhibit L).

Applicant has engaged the services of a tax attorney, and he is in the process of making a proposed a settlement to the

IRS, where, if they accept, he will pay approximately \$250 a week to resolve his debts, until they are no longer collectible because of the collection statute limitation date. At this time, until the IRS indicates the amount for tax years 1995 and 1996 that are no longer collectible, I find that Applicant still owes the full amount of \$13,023.48, as alleged under 1.d. and 1.e.

Applicant initially became delinquent to the IRS in 1992, because as he stated, "the '90s were a little tough on me" (Tr at 27). In 1992 his wife divorced him, which resulted in him losing his home. In 1995, the company that he had worked for 18 years went out of business, and at the age of 45, his salary was reduced from \$60,000 a year with significant benefits to \$30,000 with fewer benefits. Six months previous to his losing his employment, he remarried, and two years later his wife began to develop symptoms of multiple sclerosis (MS), which was ultimately diagnosed as full scale S. His wife's income went from \$30,000 annually to disability payments of \$13,000 a year, and her medical bills were significant. Applicant also testified that because of his troubles from 1992 through 1995, he was in an "an alcoholic fog", which he believes contributed to his lapse of judgement that resulted in his tax problems (Tr at 37, 39). In 1997 he successfully underwent a three month alcohol treatment program, and currently he rarely consumes alcohol.

With the exception of the debt to the IRS of \$13,023.48, Applicant is current on all of his other debts. He has filed and paid his taxes on time since 1997.

Finally, Applicant introduced two letters of recommendation from two individuals, a United States Marine Corps Gunnery Sergeant and an Educational Support Specialist, who know Applicant in his professional setting. Both of them strongly recommended him for a position of trust and described him in extremely positive terms (Exhibit L).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2).

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of Applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless

security worthy. As noted by the United States Supreme Court in Department of the Navy v. Egan, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following:

With respect to Guideline F, the Government has established that Applicant has had a history of financial difficulties and overdue debts to the IRS. However, Applicant had a number of difficult problems that contributed to his financial difficulties; yet despite these difficulties, he always filed his tax returns and paid a significant amount to the IRS every year. The evidence shows that Applicant has made a good faith effort to resolve his debt with the IRS, and at this time he owes to the IRS approximately \$13,000, which he should be able to resolve. All of Applicant's other bills are current and he now exhibits responsible financial behavior.

Regarding the Disqualifying Conditions (DC) under Guideline F, I conclude both DC E2.A6.1.2.1., and DC E2.A6.1.2.3 apply, because of Applicant's history of not meeting financial obligations and his inability to satisfy his debt to the IRS. However, I find that Mitigating Condition (MC) E2.A6.1.3.1. applies because the behavior that resulted in Applicant's overdue debts to the IRS was last exhibited in 1997. MC E2.A6.1.3.3. also applies because Applicant went through a number of problems including loss of employment and illness of his wife that were beyond his control. Finally, MC E2.A6.1.3.6. applies because Applicant has initiated a good-faith effort to resolve his overdue debt to the IRS. I, therefore, hold Guideline F for Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Financial Considerations, Guideline F: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge