

DATE: March 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-08194

ECISION OF ADMINISTRATIVE JUDGE

EDWARD W. LOUGHRAN

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 54-year-old employee of a defense contractor. She has accrued more than \$200,000 in unpaid federal and state taxes. Applicant did not falsify her security clearance application as alleged because her answer to the pertinent question was technically correct. Applicant mitigated the personal conduct concern, but failed to mitigate the financial considerations concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 11, 2006, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing on January 19, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on February 1, 2007. A notice of hearing was issued on February 8, 2007, scheduling the hearing for February 27, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered four exhibits that were marked as Government Exhibits (GE) 1 through 4, and admitted without objection. Applicant testified and offered ten exhibits that were marked Applicant Exhibits (AE) A through J, and admitted without objection. DOHA received the hearing transcript (Tr.) on March 9, 2007.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 54-year-old employee of a defense contractor. She was suspended from her position in late December

2006, pending the outcome of this proceeding. She will be reinstated if she is granted a security clearance. She has been married since 1988, and has two adult stepchildren. [\(2\)](#)

Applicant is a college graduate, with several years of law school. During the 1980s and early 1990s, Applicant was gainfully employed with a good salary. Applicant was laid off in about 1993. [\(3\)](#) From about 1993 through 2001, Applicant was self employed, and did not earn very much money. Applicant only earned more than \$6,000 during one year. During five of the years, she earned less than \$3,500. [\(4\)](#) In 2001, she began work for a federal contractor. She worked in the same capacity for various contractors until she was suspended in late December 2006. Applicant's husband worked for a public agency servicing two other states from about 1985 to 2006. He is now retired. [\(5\)](#)

Applicant and her husband have had tax issues since before 1993. The Internal Revenue Service (IRS) filed a tax lien against her in 1993 for \$83,044. [\(6\)](#) The IRS filed another lien in December 2003, in the amount of \$6,697, for tax years 1996 and 1997. [\(7\)](#) Applicant's state of residence filed tax liens against her in November 2000, for \$17,697; October 2003, for \$11,333; and January 2004, for \$11,366. [\(8\)](#) On October 26, 2005, Applicant's state of residence filed a Notice of Income Tax Wage Lien against Applicant in the amount of \$166,667, for tax years 1993, 1995, and 1998 through 2003. [\(9\)](#) Applicant's state of residence has been garnishing \$507 from her pay every two weeks since 2005. [\(10\)](#) As of January 9, 2007, Applicant owed the state \$157,838, for tax years 1995, and 1998 through 2004. [\(11\)](#)

Applicant and her husband consistently filed federal tax returns, but did not always file state tax returns. They moved from one jurisdiction to their current state of residence in about 1990. Applicant's husband continued to work in the jurisdiction in which they used to live. When they lived and worked in the old jurisdiction, they filed their federal and local tax returns. When they moved to their current state of residence, they did not file state tax returns for their current state of residence, nor for the jurisdiction in which Applicant's husband continued to work. Applicant's husband handled the filing of the taxes. There may have been some initial confusion over the necessity to file their local state tax returns. Applicant admits at some point they knew they had to file state tax returns, but did not because they were struggling financially. They first filed any tax returns for their state of residence in 2004, for tax year 2003. [\(12\)](#) When asked why they did not file state tax returns for tax years 2001 and 2002, Applicant stated:

Quite frankly, we, we were afraid to. We, well I knew that once we started filing them, then it was going to kick in all the others that we owed. [\(13\)](#)

Since Applicant and her husband did not file state tax returns for their state of residence for many years, the state determined their tax liability by using the figures available to the state. The state apparently would utilize their federal return status, i.e., "married filing jointly," and apply it to their state tax. Applicant states she intends to file her state tax returns. She needs copies of her old federal returns in order to file her back state returns. Many of her old documents are in storage and Applicant has been unable to locate copies of her old federal returns. Applicant has requested copies of her old federal returns from the IRS. Her state has an officer that will assist her in submitting her state returns. Applicant believes that once the returns are filed, that her state tax debt will be substantially lowered. It is possible that Applicant could substantially lower her tax liability for the years she was self employed by filing as "married filing separately." While this could lower her personal tax liability, it would likely substantially raise her husband's tax liability, thereby increasing the total amount owed as a family unit. In order to avail herself of this option, Applicant would also likely have to amend their federal tax returns to married filing separately, which would also raise their combined federal tax liability. Applicant has not decided to take that drastic step. [\(14\)](#)

Since they began filing their state tax returns in 2004, Applicant and her husband accrued additional tax debt. They filed the returns and would send what they could, but were unable to pay all the taxes owed. [\(15\)](#) Applicant and her husband filed their federal tax return for tax year 2005. They did not pay the IRS all the tax owed for that year. They have not yet filed their returns for tax year 2006. Applicant estimates her current debt to the IRS at probably more than \$100,000. [\(16\)](#)

Applicant has entered into several agreements to repay the IRS. As she accrued additional tax debt, new agreements would be entered. She began to pay the IRS \$600 per month in January 2004. She made payments of approximately

\$4,757 in 2004, applied toward tax year 1993. That tax year has a current balance of \$0. [\(17\)](#)

Applicant entered into an installment agreement with the IRS in September 2005, to pay \$600 per month, beginning September 25, 2005, for tax years 1994, 2002, and 2003. [\(18\)](#) Additional payments in 2004 through 2006, of about \$9,480, were credited toward her debt for tax year 1994. That tax year also has a current balance of \$0. [\(19\)](#)

Applicant entered into an installment agreement with the IRS in October 2006, to pay \$600 per month, beginning October 2006, for tax years 1994, and 2002 through 2004. [\(20\)](#) Applicant made payments of \$600 in November and December 2006 for tax years 2002 and 2003. [\(21\)](#)

Applicant entered into an installment agreement with the IRS in January 2007, to pay \$160 per month, beginning February 25, 2007, for tax years 2003 through 2004. Applicant lowered the payments from \$600 to \$160, because of her lowered income resulting from her suspension in December 2006. [\(22\)](#)

Applicant's husband paid child support and assisted with his son's tuition at a prestigious private university. Applicant's husband was also ill at one point. All of which contributed to their financial issues. [\(23\)](#) Applicant is aware that it will take a long time, but she stated a firm intent to eventually pay their delinquent taxes. [\(24\)](#)

Applicant submitted a security clearance application, Standard Form 86 (SF-86), on February 9, 2005. Question 36 asked, "In the last 7 years, have you had a tax lien placed against your property for failing to pay taxes or other debts?" Applicant answered "NO." [\(25\)](#) At that time Applicant had several tax liens as discussed above. Applicant interpreted the term "property" in the question to mean "real estate and assets." Since Applicant did not own any real estate, she felt the correct answer to the question was "NO." [\(26\)](#) Copies of the actual federal liens were not placed into evidence. The only state tax lien in evidence was a lien against wages. [\(27\)](#) Applicant's interpretation of the question was reasonable under the circumstances. Department Counsel conceded that Applicant did not have a tax lien against her property, and that her answer was technically the truth. [\(28\)](#) Since Applicant's answer was correct, or at least correct within her and the Department Counsel's interpretation of the question, I conclude she did not intentionally falsify this question of the SF-86.

Applicant is highly regarded by her employer, and in her community. Her performance evaluations have been excellent. [\(29\)](#) Character letters on Applicant's behalf praise her loyalty, dedication, decency, capability, reliability, diligence, commitment, trustworthiness, honesty, integrity, intelligence, and ability to handle and protect classified information. [\(30\)](#)

POLICIES

"[N]o one has a 'right' to a security clearance." [\(31\)](#) As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." [\(32\)](#) The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." [\(33\)](#) An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. [\(34\)](#) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. [\(35\)](#) The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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. [\(36\)](#)

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in the Directive and AG ¶ 2(a).

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions section below.

.CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline F, Financial Considerations

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 19(c) (*a history of not meeting financial obligations*), apply in this case. Applicant accumulated a large amount of delinquent tax debt, over a long period of time. She admits she owes more than \$200,000 in federal and state taxes.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered FC MC 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*), FC MC 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances*), FC MC 20(c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), and FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant's tax issues go back to before 1993, when the IRS filed a tax lien for \$83,044. Applicant and her husband filed their federal tax returns, but did not pay what was owed. They did not file their state returns until 2004. They still owe more than \$200,000. FC MC 20(a) is not applicable.

Applicant's husband paid child support and tuition for his son. That does not constitute a condition that was largely beyond Applicant's control. She was laid off from her job in 1993, and earned much less through self employment, until she began work for a federal contractor in 2001. Her unemployment could constitute a condition that was largely beyond Applicant's control, but she did not act responsibly under the circumstances. Unemployment would be a factor as to why an individual did not immediately pay back taxes. It is not a legitimate basis for failure to pay current taxes, as the tax burden is lowered as the income is lowered. It also does not account for Applicant's failure to file all her tax returns, and pay her current taxes, after she returned to work in 2001. Her husband's illness does not appear to have been a major factor in the accumulation of their tax debt. FC MC 20(b) does not apply.

Applicant and her husband entered into a payment plan with the IRS, and the state is garnishing her wages. They are not truly progressing because while they have been paying down their back taxes, they have not been paying their current taxes. Applicant admitted they are not truly making headway on paying their tax debt. This does not constitute a good-faith effort to repay overdue creditors or otherwise resolve debts. There are no clear indications that the problem is being resolved or is under control. Neither FC MC 20(c), nor FC MC 20(d) is applicable.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified

information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In order to support a falsification allegation under Guideline E, there must first be a finding that the answer on the SF-86 was incorrect or factually false. There was no finding in this case that Applicant provided an incorrect or factually false answer to the question alleged in the SOR. No Personal Conduct Disqualifying Condition is applicable. I conclude Guideline E in her favor.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive. I have also considered every finding of fact and conclusion discussed above.

Applicant owes the IRS and her state more than \$200,000 in back taxes. Her tax delinquency extends back many years. She admittedly did not always fulfil her legal responsibility of filing her state tax returns, because she was afraid it would key the state to the fact that she and her husband were delinquent on their taxes for previous years. Appellant has been paying the IRS and her state through payment plans and garnishments. This has accomplished little to alleviate her overall tax debt, because during the periods she was paying her back taxes, she was not paying her current taxes. This has continued through at least the 2005 tax year. Applicant is a mature, well-educated woman. She is highly regarded in her workplace and in her community. This does not overcome her disregard for her legal responsibility to file and pay her taxes. Applicant's tax debts raise her potential for pressure, coercion, exploitation, or duress.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the personal conduct concern, but has not mitigated the security concerns raised by her financial issues.

FORMAL FINDINGS

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

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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of 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.

Edward W. Loughran

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

2. Tr. at 40, 43; GE 1.

3. Tr. at 45-46.

4. Applicant's response to SOR; AE C.

5. Tr. at 44, 70.

6. Tr. at 62-63; Applicant's response to SOR; GE 2 at 2; GE 4 at 1.

7. Applicant's response to SOR; GE 2 at 2; GE 4 at 1.

8. *Id.*

9. GE 3 at 8; AE A at 2.

10. Tr. at 55-56; GE 3 at 4-5.

11. AE A at 3.

12. Tr. at 22-30.

13. Tr. at 59.

14. Tr at 33-38, 61-62, 71; Applicant's response to SOR.

15. Tr. at 60.

16. Tr. at 61.

17. AE H.

18. AE B at 14.

19. AE B; AE I.

20. AE B at 9-13.

21. AE B.

22. *Id.* at 2-8; Applicant's response to SOR.

23. Tr. at 41-42, 65.

24. *Id.* at 73.

25. GE 1 at 6.

26. Tr. at 21-22, 99; Applicant's response to SOR; GE 3 at 3.

27. GE 3 at 8; AE A at 2.

28. Tr. at 96-97.

29. AE F.

30. AE E.

31. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

32. *Id.* at 527.

33. Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

34. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

35. *Id.*; Directive, ¶ E2.2.2.

36. Exec. Or. 10865 § 7.