

DATE: December 10, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0272

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Pamela C. Benson, Esq., Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On April 14, 1997 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, as amended by Change 3, dated February 16, 1996, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on May 22, 1997, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on July 31, 1997 and is credited with receiving it on September 2, 1997. He provided no written response within the time permitted (30 days) by the Directive. The case was assigned to this Administrative Judge on November 7, 1997.

STATEMENT OF FACTS

Applicant is 34 years of age and has been employed by his current defense contractor (Company A) since November 1993. He seeks a security clearance at the level of secret.

Summary of Allegations and Responses

Applicant is alleged to have engaged in pattern criminal conduct: Failure to file his federal income tax returns for the tax years of 1984-1985, 1987 and 1992-1995 and failure to file his State A income tax returns (a felony) for the tax years of 1986-1988 and 1992-1995.

Additionally, Applicant is alleged to have incurred financial debts which have not been discharged and which expose Applicant to pressures to engage in illegal acts to generate funds. Applicant is indebted to (a) the IRS in the amounts of

\$4,380.37 (for tax years 1984 and 1985), \$2,928.28 for tax year 1986, and \$3,231.71 for tax year 1987, (b) State A's Department of Revenue in the amounts of \$1,533.41 (for tax year 1985) and \$2,237.59 (for tax years 1989-1991), (c) Creditor 1 in the approximate amount of \$18.00 for an account turned over to collection, (d) Creditor 2 in the amount of \$120.23 for an account turned over to collection, and (e) Creditor 3 in the amount of \$546.82 for an account turned over to collection.

For his answer, Applicant admits each of the individual allegations and assures his intention to settle his outstanding cases when he returns to the United States after the completion of his contract (estimated to be November 1998).

STATEMENT OF FACTS

Applicant's admissions to the allegations covered in the SOR are incorporated herein by reference and adopted as findings. Additional findings follow.

Applicant failed to file federal tax returns for the tax years of 1984-1985, 1987, and 1992-1994 and State A tax returns for the tax years 1986-1988 and 1992-1994. He explained in his January 18, 1996 DIS statement that his federal taxes were filed in the last quarter of 1992 by an unidentified lawyer in State A. The years covered by his claimed filing are not identified in his statement. He claimed telephonic contact with an IRS official in State B who advised him of the Service's having 10 years in which to collect back taxes owed and followed up with a written 10 year extension to the Service in which to collect his back taxes. He claimed to have been making monthly payments of \$90 to \$116 a month to the Service (depending on his monthly income) on his accrued back taxes. And he claimed his intention to obtain the necessary state and federal forms, file the same and pay his tax debts in one lump sum before leaving his overseas assignment.

Notwithstanding his previous assurances, when Applicant was re-interviewed by DIS on February 3, 1997, he confirmed that he had done nothing about resolving his tax filing and debt delinquencies. He attributed his failure to two aborted trips to the United States and recommitted to filing and paying his back taxes in full upon his planned final return to the United States in September 1998. He provides no documentation of his ever taking care of his delinquent tax filings and debts (either attached to his answer or by way of response to the FORM). Without more in the record to demonstrate tangible good faith efforts to address (either by lump payments or systematic payment plan) his delinquent federal and state tax filings and debts owed the respective IRS and State A taxing authorities, Applicant cannot avoid drawn inferences that his failures to file his returns and discharge his tax debts were knowing and wilful. Any extenuating circumstances that might serve to limit the force of the inferences are not apparent in this record.

Besides his past due liabilities with federal and state taxing authorities, Applicant is also indebted to other creditors: Creditor 1 for \$18.00. Creditor 2 for \$120.23 for medical services and Creditor 3 for \$546.82 for unpaid apartment rent. None of these covered debts (albeit small debts) have been satisfied, explained or committed to any reasonable payment plan. Applicant's general expression of intentions to take care of his debts when he returns from his overseas assignment is insufficient to constitute a substantive repayment plan or even a credible commitment to repay his debts.

POLICIES

The Adjudicative Guidelines of the Directive (Change 3) lists "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in F.3 of Enclosure 2 of the Directive, as well as the Directive's preamble to Change 3, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct (Criterion J)

Disqualifying Conditions

1. Any criminal conduct, regardless of whether the person was formally charged.
2. A single serious crime or multiple lesser offenses.

Mitigating Conditions: None.

Financial Considerations (Criterion F)Disqualifying Conditions

1. A history of not meeting financial obligations.
2. Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.
3. Inability or unwillingness to satisfy debts.

Mitigating Conditions: None.

Burdens of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's suitability for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controversial fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's inability to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of proof shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant presents with a lengthy history of tax filing delinquencies at both the federal and state level. His assigned explanations for failing to file his tax returns in a timely way were never documented. To be sure, he provides no evidence of his ever having filed tax returns (timely or otherwise) for the covered years. Applicant's admitted failures to file his federal income tax returns for tax years 1984-1985, 1987, and 1992-1994 constitute multiple misdemeanor violations of 26 U.S.C. Sec. 7203 under the facts presented and are enough to enable Government to meet its proof burden under Criterion J.

Applicant's admitted failure to file his State A income tax returns in a timely way for tax years 1991 through 1993 not only constitute pattern felonies under Sec. 42-137 State A's Rev. Stats. but reflect exhibited poor judgment, unreliability and untrustworthiness. Without any documented indicia of reliance on his attorney to file his returns earlier, or recent efforts to file his late returns, Applicant is in no position to successfully mitigate the adverse judgment/trust implications

of his past failures to file tax return with the proper federal and state tax authorities. Applicant does not carry his evidentiary burden and merits unfavorable conclusions under sub-paragraphs 1.a through 1.n.

Posing additional security concerns are Applicant's recurring financial difficulties derivative of his past tax liabilities with the IRS and State A and his covered debts with Creditors 1 through 3. His federal tax liabilities alone exceed \$10,000.00 and are compounded by his aggregation of state tax liabilities with State A in excess of \$3,000.00.

Excessive debt accumulation and failure to address debt delinquencies and failure to address them in a responsible way turn temporary shortfalls into long term financial problems that expose the debtor to risks of pressure and coercion. Applicant's inability and/or unwillingness to discharge his tax liabilities and other obligations in a seasonable way have and continue to raise material questions about his reliability and trustworthiness, even if these aggregate debts (especially his relatively small debts owed to Creditors 1 through 3) do not appear to place Applicant at any immediate risk to pressure or coercion. Applicant's actions invite the coverage of Adjudicative Guidelines: DC 1 (history of not meeting financial obligations), DC 2 (embezzlement and fraud related) and DC 3 (inability or unwillingness to satisfy debts). And Applicant's past debt problems do raise material security concerns about his reliability and trustworthiness to access classified information. Government carries its initial proof burden.

Applicant provides no probative documentation of any mounted efforts to discharge his taxes and other debts, seek financial counseling, or rework his obligations. His is a field of broken commitments to his creditors, the DIS agents who interviewed him, and himself. Favorable extenuation and mitigation considerations covered by the Adjudication Guidelines are unavailing to Applicant on the basis of the current record. His accumulated debts are neither isolated nor the result of conditions beyond his control. And he can claim no tangible counseling initiatives or good faith efforts to repay his debts. That he may still harbor intentions to take care of his debts is not enough to enable him to claim any meaningful extenuation/mitigation benefits under either the Adjudicative Guidelines or the more general F.3 considerations in the Directive.

Financial risk assessment in the context of a clearance appraisal must take account of not only aggregate of incurred debts, but the circumstances of their creation, and most importantly what steps the person has taken to deal with them. Making predictive judgments about an applicant's indicated ability to avert financial pressures in the future must necessarily encompass the applicant's past behavior and restorative efforts. In Applicant's case, evidence of credible financial restoration is generally lacking. Without more in the record to corroborate his multiple repayment assurances, Applicant is not in a position to mount any substantial mitigation showing. Tangible corrective efforts, not merely repeated intentions, are necessary to absolve an applicant of nascent coercion/reliability risks associated with significant and persistent debt arrearages (as here). Even if his still outstanding debts have not rendered him vulnerable to coercion and pressure (natural risks associated with financial difficulties), as he claims, these debts continue to subject him to doubts about his reliability and trustworthiness.

So dependent is a person's clearance to access classified information on presumed reliability and trust that margins for departure from strict accountability standards are necessarily small. Applicant's persistent failure to affirmatively address his debt problems with the taxing authorities and his other listed creditors preclude him from fully absorbing all the risks associated with his ongoing financial difficulties. Applicant fails to carry his evidentiary burden, and unfavorable conclusions warrant with respect to sub-paragraphs 2.a through 2.h.

In reaching my decision, I have considered the evidence as a whole, including each of the factors considered in F.3 of the Directive and the Directive's Change 3 Guidelines in the preamble.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS listed above, this Administrative Judge makes the following FORMAL FINDINGS:

CRITERION J: AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

Sub-para. 1.i: AGAINST APPLICANT

Sub-para. 1.j: AGAINST APPLICANT

Sub-para. 1.k: AGAINST APPLICANT

Sub-para. 1.l: AGAINST APPLICANT

Sub-para. 1.m: AGAINST APPLICANT

Sub-para. 1.n: AGAINST APPLICANT

CRITERION F: AGAINST APPLICANT

Sub-para. 2.a: AGAINST APPLICANT

Sub-para. 2.b: AGAINST APPLICANT

Sub-para. 2.c: AGAINST APPLICANT

Sub-para. 2.d: AGAINST APPLICANT

Sub-para. 2.e: AGAINST APPLICANT

Sub-para. 2.f: AGAINST APPLICANT

Sub-para. 2.g: AGAINST APPLICANT

Sub-para. 2.h: AGAINST 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge