

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant is a 65-year-old truck driver. He occasionally works for his ex-wife driving trucks. He has more than \$150,000 in unpaid tax liens to the IRS. He admitted he has not paid his taxes in 15 years. He also has other unpaid delinquent debts that he denies, but has not contacted the creditors or credit agencies to dispute. Applicant failed to list any of his delinquent debts on his security clearance application. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

CASENO: 06-24382.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 06-24382
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**DECISION OF ADMINISTRATIVE JUDGE
CAROL G. RICCIARDELLO**

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Connie Clement
Personal Representative

SYNOPSIS

Applicant is a 65-year-old truck driver. He occasionally works for his ex-wife driving trucks. He has more than \$150,000 in unpaid tax liens to the IRS. He admitted he has not paid his taxes in 15 years. He also has other unpaid delinquent debts that he denies, but has not contacted the creditors or credit agencies to dispute. Applicant failed to list any of his delinquent debts on his security clearance application. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations, and Guideline E, personal conduct. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on February 9, 2007 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 effective September 1, 2006. Applicant answered the SOR in writing on February 28, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 1, 2007. I convened a hearing on June 26, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered nine exhibits that were marked as GE 1-9 and admitted without objections. Applicant testified on his behalf and offered one exhibit that was marked as AE A and was admitted without objection. The record was held open to allow Applicant to submit additional exhibits. Applicant did not submit any other exhibits and the record was closed. DOHA received the hearing transcript (Tr.) on July 18, 2007.

FINDINGS OF FACT

Applicant is a 65-year-old truck driver who is occasionally employed. He has held a secret security clearance since 1995. He stated he was the part-owner of a trucking company with his wife until 2004, when they divorced and he gave her the whole company. She continues to own the company and he occasionally takes jobs from her, but she does not pay him. Instead she pays his utilities, trailer fees, and food.¹ He does not receive any other spending money from her. He receives approximately \$900 from social security each month. He pays \$100 to a disabled brother. He does not provide support for anyone else. He served in the Marine Corps for five years and in 2004 began receiving his medical services through the Veterans Administration. He has no other sources of income.

Applicant owes approximately \$153,743 to the Internal Revenue Service (IRS) in back taxes, penalties and interest dating back to at least 1995. Tax liens were filed against him on September 20, 1995, and August 16, 2004. An additional tax lien was filed on March 25, 2004, on a tax debt for \$10,261. That lien was released on June 13, 2005. No explanation was provided as to why it was

¹Tr. 33-35.

released.² Applicant admitted he has not paid taxes in fifteen years.³ He also admitted that he did file taxes, but not every year.⁴ He then stated his wife would take care of the taxes and he did not bother with them.⁵ It is unclear for which years he was referring. He stated he never had the money to pay the taxes.⁶ When he owned the trucking company his gross monthly income was approximately \$4,000-5,000 a month. After he paid his monthly expenses he would have \$600-700 left.⁷ He did not withhold money from his pay for taxes during the tax year and then would be unable to pay the tax debt when due. He has not worked full-time since 2004.

Applicant does not believe he owes the amount alleged to the IRS. He also stated he contacted the IRS once in 1992 because he was trying to negotiate a settlement for his taxes. The IRS wanted him to pay \$400 a month. He did not agree to the offer and he never contacted the IRS again.⁸

Applicant stated he hired an attorney approximately five to six years ago to help straighten out his taxes. A vague nonspecific letter was provided by the attorney.⁹ The letter stated that Applicant's tax liability was reduced by the IRS because he had not taken applicable deductions and he does not owe the amount that is alleged. The attorney claimed he filed amended returns for Applicant and the IRS "declared the remaining rather small tax debts-uncollectible."¹⁰ No supporting documents were provided. He further stated

I am not at all worried [Applicant] will not be able to meet any requirements to pay reasonable monthly amounts on taxes owed should the IRS change its mind and decide he should pay something at this time. His tax liabilities actually present no burden to him-given the declaration that the IRS is not interested in collecting even the rather small amounts left-and in any event the IRS would of course be glad to arrange payments he could afford-they are required by law to do that.¹¹

Again, nothing was provided to show that the IRS reduced and forgave all Applicant's tax debts. His attorney claimed in his letter that all of the tax liens were reduced and he believes the statute of limitations had run on the debts. No supporting documents from the IRS were provided to show the

²GE 4.

³Tr. 31.

⁴Tr. 41.

⁵*Id.*

⁶*Id.*

⁷Tr. 52.

⁸Tr. 31-32.

⁹AE A.

¹⁰*Id.*

¹¹*Id.*

amounts were reduced and barred by the statute of limitations. He also claimed he represented Applicant in tax court to have the amount reduced. No official court documentation was provided to support this assertion.

In addition to tax debts, Applicant has approximately \$10,377 in medical debts alleged as delinquent. These debts were placed for collection in September 2004 and June 2001. Applicant stated these are not his debts but belong to his ex-wife.¹² These debts were incurred while Applicant and his wife were still married. On Applicant's most recent credit report it lists 16 new medical debts that are delinquent.¹³ Applicant denied he owed these debts, again stating they belonged to his ex-wife. He has not contacted the credit agency to dispute any of the debts, nor has he had his ex-wife attempt to resolve them.¹⁴ He did not contact any of the medical creditors to advise them he should not be billed for services or to arrange a payment plan. He did not provide any documentation to show the debts do not belong to him. He admitted he did get services from one of the medical creditors and paid \$1,000 cash.¹⁵ He has no medical insurance. He stated prior to going to the Veteran's Administration for medical services, he paid his medical bills with cash.¹⁶

On Applicant's security clearance application (SCA) dated March 24, 2006, he lists his position at his place of employment from "5/1988 to present" as "owner-operator."¹⁷ This contradicts his testimony that he gave the truck business to his ex-wife when they divorced. When questioned about whether he and his ex-wife still live together, he denied that they did. However, he lists his address and lot number of his trailer as the same address and lot number of his ex-wife's.

Applicant answered "no" to questions 28a and 28b on his security clearance application, inquiring if in the last seven years he had any debts over 180 days delinquent and whether he was currently more than 90 days delinquent on any debts. Applicant's explanation for why he failed to list he had delinquent debts over 180 days and 90 days past due was because he confused the word "debt" with the word "loan," believing the question was inquiring if he was delinquent on a car or truck loan and he was not, so he answered no. He stated he misunderstood the question.¹⁸ I find Applicant's testimony was not credible.

POLICIES

¹²Tr. 23.

¹³GE 9; These additional debts are not considered for disqualifying purposes, but will be considered when analyzing the whole person, Applicant's ability to repay the debts and his credibility.

¹⁴Tr. 36.

¹⁵Tr. 38.

¹⁶Tr. 25

¹⁷GE 1 at 10.

¹⁸Tr. 27.

“[N]o one has a ‘right’ to a security clearance.”¹⁹ 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.”²⁰ The President has 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.”²¹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²² “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁵ 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.²⁶

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information.²⁷ “Substantial evidence” is “more than a scintilla but less than a preponderance.”²⁸ The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁹

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.³⁰ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant

¹⁹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁰*Id.* at 527.

²¹Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

²²ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²³*Id.*

²⁴*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²⁵Executive Order 10865 § 7.

²⁶*See* Exec. Or. 10865 § 7.

²⁷*See Egan*, 484 U.S. at 531.

²⁸*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁹*See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996)

³⁰*See* Directive ¶ E3.1.15.

or continue his security clearance.”³¹ “[S]ecurity clearance determinations should err, if they must, on the side of denial.”³²

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

CONCLUSIONS

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

Financial Considerations

Financial Considerations are a concern because 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

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 has admittedly not paid his taxes in 15 years and even if he were to be believed that he does not owe the amount alleged, he has not provided any documentation to show he paid a reduced amount or the tax debts were forgiven. He owes medical debts that he has not paid, and even if he were to be believed that these debts are for medical services for his ex-wife, the debts were incurred while he was married to her. In addition, he has not contacted the creditors to explain the debts or resolve them. Both disqualifying conditions apply.

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 has 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 failed to pay

³¹ISCR Case No. 01-207000 at 3 (App. Bd. Dec. 19, 2002)

³²*Egan*, 484 U.S. at 531; see Guidelines ¶ 2(b).

his taxes for fifteen years and continues to owe the IRS for back taxes, penalties and interest. He has made no attempt to repay any of the debts. He did provide information that he sought assistance with his tax problems, but nothing was offered to support he has made even a nominal payment to the IRS or set up any payment plan. The debts are recent and because he did not plan for his tax debt each year, his actions cast doubt on his judgment and reliability. He is aware there are medical debts that were incurred while he was married, but denies responsibility for them, and has not taken any action to contact the creditors or the credit agency reporting it. These debts were not the result of behavior that was beyond his control. Applicant has chosen to ignore these debts. Despite contacting an attorney, no substantive evidence was provided to show the problem is being resolved or under control. Applicant has not made a good faith effort to repay his debts. I find none of the disqualifying conditions apply.

Guideline E—personal conduct

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, 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.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Applicant intentionally failed to list debts he was aware he owed and were delinquent. Applicant was well aware of his tax debts and that he had not paid his taxes in 15 years. Applicant's explanation and testimony for why he failed to divulge his delinquent debts was not credible. He stated he misunderstood the question and believed he only had to divulge delinquent loan payments.³³ The questions are very clear. If Applicant was truly confused by the question about his delinquent debts, he certainly would have listed the tax liens against him as required under Question 27c. Instead he answered "no" to that question. This omission is considered in determining whether Applicant was just confused, or whether he deliberately failed to list his financial problems. I find after observing his demeanor and testimony, that he deliberately omitted and concealed this derogatory financial information.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC) and especially considered PC MC 17(a) (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and PC MC 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress*). I find neither applies. Applicant's testimony at his hearing was not credible and not believable. No evidence was provided to show Applicant made a good faith effort to correct his omission and falsification before being confronted. He failed to offer any positive steps he has taken to reduce or eliminate vulnerability to exploitation, manipulation or duress. I find neither of the above mitigating conditions apply.

³³Tr. 19.

The Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In addition to considering the specific disqualifying and mitigating conditions under the guideline, I have also considered the adjudicative process factors listed in ¶ 2a (1)-(9) of the Guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Specifically these are: (1) the nature, extent and seriousness of the conduct; (2) the circumstances and surrounding the conduct to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation was voluntary; (6) the presence or absence of rehabilitation and other permanent 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the Guidelines should be followed whenever a case can be measured against this policy guidance.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's security clearance concerns. I considered Applicant's age, employment and financial situation. I considered that Applicant did seek assistance from an attorney. I also considered that Applicant has not taken any action to contact the creditors, dispute debts, make payments, or provide documentation that he is not responsible or he is making nominal payments. In addition, I considered Applicant's testimony regarding his failure to divulge his debts on his SCA. He was not believable. I conclude Applicant has failed to mitigate the security clearance concerns raised by financial considerations under Guideline F, and personal conduct, under Guideline E.

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:	For 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:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Subparagraph 2.b:

Against 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.

Carol G. Ricciardello
Administrative Judge