

DATE: November 30, 2007

In re:

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SSN: -----

Applicant for Security Clearance

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) ISCR Case No. 07-05231  
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**DECISION OF ADMINISTRATIVE JUDGE  
ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

Gina L. Marine, Esq., Department Counsel

**FOR APPLICANT**

Bertha McMillian, Personal Representative

**SYNOPSIS**

Applicant owes approximately \$35,790 in taxes, penalties and interest to the Internal Revenue Service for tax years 1991, 1996, 1998, 1999 and 2000. He has retained a certified public accountant to assist him in obtaining a settlement of the tax liabilities with the federal government. Once a settlement is reached, his older sister is willing to pay the tax debt for him. An offer in compromise was submitted to the Internal Revenue Service only two weeks prior to the hearing. The status of negotiations with the Internal Revenue Service is uncertain. A promise to pay in the future is not sufficient to mitigate the concerns raised under financial considerations. Clearance is denied.

**STATEMENT OF CASE**

On July 24, 2007, 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.<sup>1</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement, dated September 3, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to me on October 2, 2007. On October 4, 2007, a notice of hearing was sent scheduling the hearing for October 24, 2007. The hearing was held as scheduled. The government offered four exhibits which were admitted as Government Exhibits (Gov) 1-4 without objection. Applicant offered 12 exhibits which were admitted as Applicant Exhibits (AE) A - L without objection. The transcript was received on November 5, 2007.

### **FINDINGS OF FACT**

In his SOR response, Applicant denies the overall concern under Guideline F but admits to the factual allegation in SOR ¶ 1.a. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 51-year-old man employed with a Department of Defense contractor who is applying for a security clearance.<sup>2</sup> He is married and has three adult children from a previous marriage. He has three children with his current wife, whom he married in August 2002 a step-daughter, age 7, and two daughters ages 4 and five months.<sup>3</sup> He has been employed as a switch technician with his current company since October 2006. He has worked as a contractor on a military base over the last 17 years.<sup>4</sup>

In the early 1990s, Applicant divorced his first wife. He underwent several years of instability. During this time he did not file his taxes, although he was aware of the requirement to file tax returns.<sup>5</sup> He cashed in a profit-sharing plan in 1996 in order to purchase a home but did not pay taxes on it. As a result, a tax lien was filed against Applicant on February 7, 2005. Applicant owes approximately \$35,790 to the Internal Revenue Service (IRS) for tax years 1991, 1996, 1998,

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<sup>1</sup>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).

<sup>2</sup> Gov 1.

<sup>3</sup> Tr. at 38; AE M.

<sup>4</sup> Tr. at 12.

<sup>5</sup> Tr. at 33.

1999 and 2000.<sup>6</sup> No payments have been made towards the tax debt aside from the IRS keeping Applicant's tax refunds and applying the refunds towards his tax debt.<sup>7</sup>

On October 17, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to question 27(b), he listed his tax lien. He indicated that he hired a tax firm to work on the tax lien.<sup>8</sup>

Applicant first became aware of his tax issues about three or four years ago after being contacted by the IRS.<sup>9</sup> He attempted to resolve the debt after he was contacted by the IRS regarding the delinquent tax debt. He claims that he submitted offers in compromise individually but the offers were rejected by the IRS.<sup>10</sup> In 2005, he retained a CPA firm to assist him with settling the tax debt.<sup>11</sup> It is unclear, what contact, if any, the CPA firm had with the IRS. Applicant informed his CPA approximately two weeks prior to the hearing that he wanted to submit an offer in compromise. He does not know the amount of the initial offer. His CPA will notify him once he prepares the offer in compromise.<sup>12</sup>

Applicant's sister testified that once Applicant and the IRS reach a settlement, she is going to pay the tax debt for him. She is not treating the payment as a loan. She wants to help her brother because he has struggled through the years. She has the assets to pay the tax debt.<sup>13</sup>

Applicant testified that his wife helped him straighten out his tax problems and has helped him resolve his financial difficulties. Since 2001, he has filed and paid his taxes.<sup>14</sup>

Applicant had no breaks in employment over the past 17 years.<sup>15</sup> He and his wife have a net monthly income of \$5,800. The total monthly expenses are \$2,791. The total monthly debt payments are \$1,055. This leaves a current monthly remainder of \$1,954.<sup>16</sup> Applicant testified that the net

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<sup>6</sup> Tr. at 26,28, 33, 38; Gov 4.

<sup>7</sup> Tr. at 29-30.

<sup>8</sup> Gov 1.

<sup>9</sup> Tr. at 26; Gov 2 at 2.

<sup>10</sup> Tr. at 29.

<sup>11</sup> AE A; AE B; Tr. at 31.

<sup>12</sup> Tr. at 39-40.

<sup>13</sup> Tr. at 45-48.

<sup>14</sup> Tr. at 26, 44.

<sup>15</sup> Tr. at 40.

<sup>16</sup> Tr. at 36; Gov 2 at 4.

monthly remainder is accurate but they do not have that much in the bank at the end of the month.<sup>17</sup>

Applicant is well regarded by his friends and co-workers.<sup>18</sup> His annual performance appraisal issued in October 2007 gives an overall rating of "exceptional" which is the highest rating an employee can receive.<sup>19</sup> He successfully completed several training sessions in furtherance of his career and received numerous certificates of achievement for his work performance.<sup>20</sup>

## POLICIES

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."<sup>21</sup> In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

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.<sup>22</sup>

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

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<sup>17</sup> Tr. at 36-37.

<sup>18</sup> AE C-J.

<sup>19</sup> AE K.

<sup>20</sup> AE L.

<sup>21</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

<sup>22</sup> Revised AG, dated August 2006, ¶ 18.

“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.”<sup>23</sup> An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances 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 is 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.<sup>24</sup>

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>25</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.<sup>26</sup> “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”<sup>27</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

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<sup>23</sup> Revised AG, dated August 2006, ¶ 2(a).

<sup>24</sup> *Id.*

<sup>25</sup> Directive ¶ E3.1.14.

<sup>26</sup> Directive ¶ E3.1.15.

<sup>27</sup> Revised AG, dated August 2006, ¶ 2(b).

## Guideline F - Financial Considerations

Applicant's tax debt owed to the Internal Revenue Service raises a security concern. He owes approximately \$35,790 for delinquent income taxes for tax years 1991, 1996, 1998, 1999, and 2000. 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 to Applicant's case. He has owed these tax debts for a long time. Applicant has the means to pay his taxes but chose not to. He was employed full-time during the time that he failed to file tax returns and pay his income taxes. His conduct demonstrates an unwillingness to pay his taxes as opposed to an inability to do so.

FC DC ¶ 19(g) (*failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same*) applies. Applicant admits that he intentionally did not file his income tax returns for tax years, 1991, 1996, 1998, 1999 and 2000.

The concern under Financial Considerations can be mitigated. Applicant has a history of financial irresponsibility pertaining to his federal income tax returns spanning several years. His federal tax debt remains unresolved. Therefore, I cannot apply Financial Considerations Mitigating Condition (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*). Applicant owes the IRS for delinquent income taxes over five tax years. The debts were incurred as a result of Applicant failing to file his tax returns. Aside from the IRS applying Applicant's income tax refunds to the tax debt, no other payments have been made towards the tax debt. None of the tax debts are resolved so the problem remains.

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*) does not apply. Applicant has been continuously employed for the past 17 years. He admits that he was irresponsible when it came to filing and paying his federal income taxes. Although he retained an accounting firm to represent him in resolving his tax debt, he did not authorize his accountant to submit an offer in compromise to the IRS until two weeks prior to the hearing. Applicant has not demonstrated that he has taken proactive steps to resolve these tax debts considering the age of the tax debts. I cannot conclude that there were recent conditions beyond Applicant's control which contributed to his financial situation. FC MC ¶ 20(b) does not apply.

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*) does not apply. Applicant has not received financial counseling. It is too soon to conclude that the tax problem is resolved or under control. At the close of the record, an offer in compromise had not been submitted to the IRS. Although his sister states that she will pay the tax debt for him once an offer in compromise is reached, a promise to pay in the future is not sufficient to mitigate the concerns raised under the financial considerations concern. It is unlikely that Applicant's tax debt will be resolved in the near future.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Although aware that he was required to file and pay taxes during the tax years in question, Applicant took no steps to resolve his federal tax debt until the IRS filed a tax lien against him. While he has retained an accounting firm for the past two years to assist with the tax debt, no steps have been taken to resolve the taxes owed. Given the age of the tax debts, I cannot conclude that Applicant made a good faith effort to resolve the tax debts. He could have negotiated a payment plan with the IRS sooner. Authorizing his accountant to submit an offer in compromise two weeks prior to his security clearance hearing does not demonstrate a good faith effort to resolve the debt.

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 assignment to sensitive duties. 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 their 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.

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered the Applicant's favorable performance report and the recommendations of his friends and co-workers. However, the tax debt remains outstanding. Considering that Applicant deliberately failed to file his income tax returns for five years; he did not attempt to resolve the tax debts until several years later after the IRS contacted him; and the resolution of the tax debt at the close of the record is uncertain; he has not met his burden to mitigate the concerns raised under financial considerations. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

### **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

### **DECISION**

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Erin C. Hogan  
Administrative Judge