



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

SSN:

Applicant for Security Clearance

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ISCR Case No. 07-08836

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 16, 2008

**Decision**

LAZZARO, Henry, Administrative Judge:

Applicant has failed to mitigate the security concerns that arise from his failure to file state and federal income tax returns and pay taxes that remain owing.

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleges security concerns under Guideline F (financial considerations). Applicant submitted an answer to the SOR that was received by DOHA on April 28, 2008, in which

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<sup>1</sup>This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive), DoD Regulation 5200.2-R, dated January 1987, as amended (Regulation), and the revised adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

he admitted all SOR allegations, denied they created a security concern, and requested a clearance decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on May 12, 2008, that was mailed to Applicant on May 14, 2008. Applicant was informed he had 30 days from receipt of the FORM to submit his objections thereto or any additional information he wanted considered. Applicant acknowledged receipt of the FORM on May 25, 2008. He timely submitted one document in response to the FORM that was forwarded to Department Counsel on July 1, 2008. Department Counsel indicated she did not object to Applicant's submission and the case was then assigned to me on July 8, 2008.

### **Findings of Fact**

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

Applicant is a 68-year-old man who has been employed as a consultant by a defense contractor since November 2001. The security clearance application contained in the FORM indicates Applicant was employed by a government agency from April 1961 until his retirement therefrom in June 2001. He worked in various positions and at several locations throughout the United States for that government agency. His last position with the agency was as a program analyst from June 1988 to June 2001.

Applicant has been married three times. His first marriage lasted from June 1960 until December 1982. The second marriage lasted from July 1984 until April 2000. These two marriages ended by divorce. Applicant has been married to his current wife since January 2001. He has three adult children.

Applicant moved to his current state of residence in January 2000. He lived in his prior state of residence from February 1987 until January 2000. Applicant failed to file an income tax return in his former state of residence for the last year (1999) he resided there. He also failed file tax returns in his current state of residence from 2000 to 2006. There is no indication in the FORM Applicant has yet filed an income tax return or paid any taxes that may or may not be due in his former state of residence for the year 1999.

Interrogatories were sent to Applicant by DOHA inquiring about the status of the alleged unpaid state income taxes in or about October 2007. Applicant responded to the interrogatories and admitted he had not filed state income tax returns for the years in question. Thereafter, he filed the income tax returns for the missing years in his current state of residence. In December 2007 and February 2008, he paid the state \$40,710 in past due taxes and \$4,266.73 in penalties and interest. There remained a balance due for penalties and interest of \$15,943.44. Applicant entered into an installment agreement with the state whereby he is to pay \$664.31 per month for 24 months to liquidate the past due interest and penalties. He made payments of \$700 in March and April in accord with the agreement.

Applicant also did not file federal income tax returns for the years 2002, 2004 and 2005 until after he received DOHA's interrogatories. In response to the interrogatories,

Applicant stated he filed the delinquent federal income tax returns in October 2007, and owed the IRS \$129,849 in back taxes, including penalties and interest. In his answer to the SOR, he indicated he had entered into a tentative installment agreement with the IRS to satisfy the delinquent taxes. He included a copy of a check, dated April 16, 2008, payable to the U.S. Treasury in the amount of \$2,700 which indicates it is a payment on the tentative installment agreement.

Applicant obtained the funds to pay the delinquent state taxes from IRA and TSP withdrawals, profits from the sale of two houses, pension funds, and his income. In his response to the FORM, Applicant indicated he was continuing to make the required payments under the installment plans he has entered into.

In his response to the interrogatories, Applicant attributed his failure to file state and federal income tax returns and pay the taxes owed to expenses related to relocating to his current state of residence in 1999/2000, records being difficult to locate because of that move, his last divorce and remarriage, and the deaths of his ex-wife, his mother, and other unidentified relatives. He did not further elaborate on how locating records affected his ability to file income tax returns for the years after he moved or how the other cited events affected his ability to either file income tax returns or pay taxes as they became due.

## **Policies**

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F (financial considerations), with its respective DC and MC, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>2</sup> The government has the burden of proving controverted facts.<sup>3</sup> The burden of proof in a security clearance case is something less than a preponderance of evidence<sup>4</sup>, although the government is required to present substantial evidence to meet its burden of

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<sup>2</sup> ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

<sup>3</sup> ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.

<sup>4</sup> *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).

proof.<sup>5</sup> “Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.”<sup>6</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>7</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

No one has a right to a security clearance<sup>9</sup> and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>10</sup> Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.<sup>11</sup>

## **Analysis**

### **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.

Applicant failed to file state and federal income tax returns or pay taxes that he owed for many years. As a result, he owed approximately \$190,000 in delinquent state and Federal income taxes at the time he received interrogatories from DOHA. Shortly thereafter, he filed the delinquent returns and paid about \$50,000 toward the taxes, interest and penalties he owed. He obtained the funds to make those payments by selling real estate he owned and withdrawing funds from retirement accounts. Accepting his claim in his response to the FORM that he has continued to make the required payments on the installment agreements he has entered into, Applicant may have paid about an additional \$12,000 since the SOR was filed. Thus, he still owes somewhere in the vicinity of \$125,000 for past due taxes, interests and penalties.

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<sup>5</sup> ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).

<sup>6</sup> ISCR Case No. 98-0761 (December 27, 1999) at p. 2.

<sup>7</sup> ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.

<sup>9</sup> *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> *Id* at 531.

<sup>11</sup> *Egan*, Executive Order 10865, and the Directive.

Disqualifying Conditions (DC) 19(a): *inability or unwillingness to satisfy debts*; DC 19(c): *a history of not meeting financial obligations*; and DC 19(g): *failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same* apply.

Applicant provided only vague explanations for his failure to file the required state and federal income tax returns or pay the taxes that he owed. He provided no reason to conclude that he lacked the ability to either file the returns or pay the taxes because of any circumstance that was beyond his ability to control. Thus, Mitigating Condition (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 did promptly file the delinquent income tax returns, pay the amounts he could, and enter into repayment agreements for the balances owing once he received the interrogatories from DOHA. However, it is noteworthy that he submitted an Electronic Questionnaire for Investigations Processing (e-QIP) in September 2006, disclosed therein that he owed delinquent state and federal income taxes, and wrote:

I have delinquent Federal and State Income Taxes due to not filing and paying. I am currently in contact with the Internal Revenue Service on these issues. I am in the process of preparing my past Federal and State Income Tax returns. I hope to have all my returns filed soon. The income taxes, penalties, and interest will be paid from current resources to the extent possible and installments if necessary. (Item 4, Section 28)

Despite these assertions Applicant made in the e-QIP, there is nothing in the FORM that indicates he took any action to file the delinquent returns or pay the past due taxes until after he received the interrogatories from DOHA and was, thereby, made aware of the potential impact these matters might have on him retaining a security clearance. The payments having apparently only been made under this duress, I conclude MC 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts* does not apply. The remaining mitigating conditions have no applicability to the facts of this case.

The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, Applicant has failed to mitigate the security concerns caused by the financial considerations that are present in this case. He

has not overcome the case against him nor satisfied his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

### **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

Subparagraphs 1.a-f:                      Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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HENRY LAZZARO  
Administrative Judge

Henry Lazzaro  
Administrative Judge