



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



In the matter of: )  
 )  
 ----- ) ISCR Case No. 08-10771  
 SSN:----- )  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank Jr., Esq., Department Counsel

For Applicant: *Pro Se*

February 24, 2010

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. The record evidence shows Applicant's financial history includes four state tax liens for multiple tax years and one federal tax lien for multiple tax years. In total, the liens amount to more than \$37,000 in back taxes. He has not paid, settled, or resolved the tax liens. He is not making a good-faith effort to resolve the liens. Accordingly, as explained below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on August 19, 2009, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations. The SOR also recommended that the case be submitted to an administrative judge to decide whether or not to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. In doing so, he admitted the factual allegations addressing the tax liens, and he denied the single allegation addressing an unpaid collection account based on an apartment lease. The case was assigned to me November 17, 2009. The hearing took place February 3, 2010. The transcript (Tr.) was received February 12, 2010.

## Findings of Fact

Applicant's admissions in his answer to the SOR are incorporated herein. Based on the record evidence as a whole, the following facts are established by substantial evidence.

Applicant is a 57-year-old engineer who is seeking an industrial security clearance. He has held an interim clearance, without a negative incident, while his case was pending. Applicant held a security clearance many years ago (approximately 1985), when he was a Sailor in the U.S. Navy.<sup>2</sup>

He has worked as a controls engineer on behalf of a federal contractor since about August 2008, which is when he submitted his security clearance application.<sup>3</sup> For 2008, Applicant estimated the gross income for his household (he's married) at \$70,000 to \$80,000; for 2009, he estimated \$140,000.<sup>4</sup>

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (Revised Guidelines), effective within the Defense Department on September 1, 2006, apply to this case. They supersede or replace the guidelines published in Enclosure 2 to the Directive.

<sup>2</sup> Exhibit A.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Tr. 82.

Applicant has a history of financial problems that are related to state and federal income taxes. He is indebted to the Internal Revenue Service for approximately \$17,652 in back taxes for tax years 1989, 1990, and 1991. The IRS filed a federal tax lien against Applicant for that amount in March 1997.<sup>5</sup> He is indebted to a state tax authority for nearly \$20,000 in back taxes for tax years 1984, 1987, 1988, 1989, 1990, 1995, 1996, 1997, 1998, and 1999. The state filed a total of four liens against Applicant for various amounts in 1993, 2001, and 2004.<sup>6</sup>

In his answer to the SOR, Applicant admitted the existence of the liens, but contended the liens were invalid and that he needed to dispute the liens, which would take time and money. At the hearing, he claimed the liens were invalid because they are not based on real or valid information.<sup>7</sup> He also claimed that he has not been engaged in a taxable activity for which he may be held accountable.<sup>8</sup>

At the hearing, Applicant admitted he had not filed an income tax return with the IRS since 1991.<sup>9</sup> He did not recall when he last filed a return with the IRS.<sup>10</sup> Likewise, he has not filed an income tax return in the state where he has lived and worked since 2007.<sup>11</sup> He claimed that he is a resident of Florida,<sup>12</sup> a state that does not have a personal income tax, although he has not lived and worked in Florida on a full-time basis since 2003. He also admitted that, since beginning his current employment in 2008, he has not had state or federal income taxes withheld from his paycheck.<sup>13</sup>

In addition to the tax liens, the SOR alleges an unpaid collection account of \$8,717. Applicant disputes this debt because he does not believe he owes the stated amount. This debt was incurred in about 2004, when Applicant and his wife vacated an apartment before the lease expired.<sup>14</sup> They departed early because his wife was exhibiting symptoms of posttraumatic stress disorder following the discovery of her deceased sister in the apartment. Applicant vacated the apartment because he believed

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<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 3.

<sup>7</sup> Tr. 66–67.

<sup>8</sup> Tr. 70–73.

<sup>9</sup> Tr. 83.

<sup>10</sup> Tr. 84.

<sup>11</sup> Tr. 85.

<sup>12</sup> Tr. 85–86.

<sup>13</sup> Tr. 84–85.

<sup>14</sup> Exhibit 2.

doing so was a medical necessity. In a written notice to the landlord, Applicant agreed he was liable for a termination penalty of \$3,746 and prorated rent of \$664, but disputed a charge of \$3,292 due to insufficient notice.<sup>15</sup> To date, Applicant has not paid, settled, or otherwise resolved any of the debt.

The company president testified on Applicant's behalf.<sup>16</sup> The company president was unfamiliar with Applicant's tax situation, but he was able to provide testimony about Applicant's attributes as an employee. Overall, the company president evaluated Applicant as a highly skilled employee who has been a valuable asset to the company.

## Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. To start, the only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information.

It is well-established law that no one has a right to a security clearance.<sup>17</sup> As noted by the Supreme Court in the case of *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>18</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>19</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>20</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>21</sup> The government has the burden of presenting

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<sup>15</sup> Exhibit 2.

<sup>16</sup> Tr. 46–55.

<sup>17</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>18</sup> 484 U.S. at 531.

<sup>19</sup> Directive, ¶ 3.2.

<sup>20</sup> Directive, ¶ 3.2.

<sup>21</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

evidence to establish facts alleged in the SOR that have been controverted.<sup>22</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>23</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>24</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>25</sup> The Agency's appellate authority has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>26</sup>

The Revised Guidelines set forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of all the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.<sup>27</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

### **Analysis**

Under Guideline F for financial considerations,<sup>28</sup> the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness, financial problems or difficulties, or financial irresponsibility. A security concern typically exists due to significant unpaid debts. The overall concern under Guideline F is that:

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

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<sup>22</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>23</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>24</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>25</sup> *Egan*, 484 U.S. at 531.

<sup>26</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>27</sup> Executive Order 10865, § 7.

<sup>28</sup> Revised Guidelines, ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

questions about an individual's reliability, trustworthiness, and ability to protect classified information.<sup>29</sup>

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

The record here supports a conclusion that Applicant has a history of financial problems or difficulties as shown by the state and federal tax liens, which represent approximately \$37,000 in back taxes. This history raises concerns because it indicates inability or unwillingness to satisfy debts<sup>30</sup> and a history of not meeting financial obligations<sup>31</sup> within the meaning of Guideline F. The facts are more than sufficient to establish these two disqualifying conditions, and they suggest financial irresponsibility as well.

As I understand his position, Applicant asserts that no law requires him to pay state or federal income taxes because the income he earns from his work does not amount to a taxable activity. The DOHA Appeal Board has made it clear, however, that a security clearance case is not an appropriate forum for contesting the legality of income tax laws:

If Applicant wishes to challenge the constitutionality and legality of federal tax laws (and IRS regulations and practices), then he must seek redress elsewhere. Under the Directive, DOHA Administrative Judges and the Board are authorized to adjudicate industrial security clearance cases, not the constitutionality and legality of federal tax laws and IRS regulations and practices. In recognition of the limits of the jurisdiction of DOHA Administrative Judges and this Board under the Directive, the rulings of federal courts on the legality and constitutionality of the federal tax laws and IRS practices and procedures must be accepted and applied in DOHA proceedings.<sup>32</sup>

Applicant has provided no legal authority for his position, and I am aware of no decision from a state or federal court that supports his position. If he is serious about his position, he needs to seek redress in the appropriate forum.

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<sup>29</sup> Revised Guidelines, ¶ 18.

<sup>30</sup> Revised Guidelines, ¶ 19(a).

<sup>31</sup> Revised Guidelines, ¶ 19(c).

<sup>32</sup> ISCR Case No. 94-1153 (App. Bd. Mar. 26, 1997) (also, the Board notes and summarizes numerous federal court decisions that have rejected challenges to the federal tax laws and IRS regulations and practices). Likewise, see ISCR Case 98-0810 (App. Bd. Jun. 8, 2000) (the Board notes and summarizes numerous federal court decisions that have rejected challenges to the federal tax laws and IRS regulations and practices).

Under ¶ 20 of Guideline F, there are six conditions that may mitigate security concerns.<sup>33</sup> The six conditions are as follows:

- (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;
- (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;
- (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;
- (d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (f) The affluence resulted from a legal source of income.

Concerning the landlord-tenant debt, Applicant disputes the amount owed, but he has been dilatory in addressing it. Still, Applicant receives credit under ¶ 20(a) because (1) the behavior that resulted in the debt happened several years ago; (2) it is the sole consumer debt at issue as the credit reports<sup>34</sup> here reflect no other collection or charged-off accounts; and (3) it occurred under usual circumstances—which Applicant believed amounted to a medical necessity—that are unlikely to recur. Given these circumstances, the landlord-tenant debt by itself or in combination with the tax issues does not present an undue security concern. On this basis, SOR ¶ 1.f is decided for Applicant.

Concerning the tax issues, all of the mitigating conditions have been considered and none apply in Applicant's favor. In contrary, the tax liens and \$37,000 in back taxes were due to circumstances within his control and resulted from his own acts or omissions or both. His tax issues are ongoing and likely to continue. The amounts specified in the tax liens are presumed to be accurate, and Applicant did not present

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<sup>33</sup> Revised Guidelines, ¶ 20 (a) – (f) (setting forth six mitigating conditions).

<sup>34</sup> Exhibits 4 and 5.

any reliable information to challenge or dispute their accuracy. He has not made a good-faith effort to resolve the tax issues. This is demonstrated by, among other things, his failure to file income tax returns, which represents the antithesis of good faith. Although his failure to file was not alleged in the SOR, I considered it for limited purposes, such as: to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider if Applicant has demonstrated successful reform and rehabilitation; and as part of my whole-person analysis.<sup>35</sup>

To conclude, the facts and circumstances surrounding Applicant's tax liens and \$37,000 in back taxes justify current doubts about his judgment, reliability, and trustworthiness. He did not present sufficient evidence to explain, extenuate, or mitigate those concerns. In reaching this conclusion, I gave due consideration to the whole-person concept<sup>36</sup> and Applicant's favorable evidence. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge

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<sup>35</sup> See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted).

<sup>36</sup> Revised Guidelines, ¶ 2(a)(1) – (9).