



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-11633 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro se*

November 8, 2010

**Decision**

LAZZARO, Henry, Administrative Judge

Applicant has disputed his federal income tax liability for years. He recently offered to pay \$56,000 to compromise the \$86,000 liability that has been determined to be his tax debt to the Government. Applicant has funds available to pay the entire balance owed if the Government refuses to accept his future offers to compromise. In 2002, Applicant sought Chapter 13 bankruptcy protection during the course of a contentious divorce. He paid all listed creditors one hundred percent of what he owed them. Clearance is granted.

On April 12, 2010, 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 a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR that was received by DOHA on May 10, 2010. He admitted both SOR allegations and requested a hearing.

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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 (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

The case was assigned to me on July 13, 2010. A notice of hearing was issued on July 23, 2010, scheduling the hearing for August 19, 2010. The hearing was conducted as scheduled. The government submitted eight documentary exhibits that were marked as Government Exhibits (GE) 1-8 and admitted into the record without objection. Applicant testified and submitted 14 documentary exhibits that were marked as Applicant's Exhibit (AE) 1-14 and admitted into the record without objection. The transcript was received on August 30, 2010.

### **Findings of Fact**

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

Applicant is a 62-year-old man who has worked as a contract administrator for a federal contractor since 1983. Applicant obtained a juris doctorate degree in 1983, and he began simultaneous self-employment as an attorney in 1992. He possessed a top secret security clearance while he served on active duty in the U. S. Air Force from 1969-72. He has held a secret security clearance since either 1982 or 1983. No prior action has ever been taken to revoke or downgrade his clearance for adverse reasons.

Applicant has been married since August 2002. He was previously married from June 1968 until that marriage ended in divorce in September 1978; from November 1978 until that marriage ended in divorce in March 1983; and from May 1992 until that marriage ended in divorce in December 2000. Applicant has one adult child.

Applicant's financial issues, as alleged in the SOR, resulted from the dissolution of his third marriage. His third wife was responsible for the family and law practice financial affairs, including filing tax returns. As the marriage apparently began to deteriorate, she began to appropriate monies to herself and to make numerous of allegations of wrongdoing on the part of Applicant, including to his federal employer and the Internal Revenue Service (IRS).

Applicant's third wife submitted fraudulent pleadings in the course of their divorce that caused the court to enter an order providing for the sale of Applicant's residence. In response, Applicant filed for Chapter 13 bankruptcy protection to effectively stay the divorce court order while he simultaneously filed a petition in the state court to quiet title on his residence. The quiet title action was decided in his favor and he paid all creditors he had listed in the Chapter 13 bankruptcy case one hundred percent of what he owed them.

Applicant has been involved in on-going disputes with the IRS for income taxes he owe as a result of his law practice. He has been audited for multiple tax years and he has sought relief through the tax courts. His liability for unpaid income taxes has been determined to be about \$86,000 due to the disallowance of deductions he took based on his law practice which the IRS determined was a hobby rather than a business. Applicant does not dispute that as a result of the tax court decision he is indebted to the

3Government. However, he has continued to engage in a dialogue with the IRS in an effort to convince them, consistent with various claims that he has made under tax laws and regulations, to accept a negotiated settlement for less than the full amount due.

On June 2, 2010, the IRS Revenue Officer Applicant has been corresponding with notified him that she was proposing to recommend rejection of his \$56,000 offer in compromise to settle the tax debt. She also notified him he could submit additional information if he so desired as long as it was received by July 19, 2010. Applicant responded to that notice on July 14, 2010. On August 2, 2010, the IRS Revenue Officer responded to Applicant's July 14, 2010 letter, and notified him that she was again recommending rejection of his offer and that if her recommendation was approved that he would receive a letter advising him that the offer had been rejected and explaining his appeal rights. Applicant has about \$105,000 available in a 401(k) that he intends to apply to use to satisfy the tax liability when all his avenues seeking compromise have been exhausted.

### **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 and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon 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. Guideline F (financial considerations) with its disqualifying and mitigating conditions, 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 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

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

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

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

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

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

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>

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## 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. . . . (Adjudicative Guideline [AG] 18)

Applicant sought Chapter 13 bankruptcy protection in 2002 during a contentious divorce as a legal means of protecting his residence from loss due to a court order his wife obtained through fraud. He thereafter defeated her effort to obtain the residence through a quiet title action, and he paid all the creditors he had listed in the bankruptcy one hundred percent of what he owed them.

Applicant has been engaged for years in legal wranglings with the IRS over the income tax liability he accrued as the result of his law practice. He has gone through a number of audits and he sought relief through the tax court. His liability has been determined to be approximately \$86,000. He recently offered \$56,000 in compromise of that liability, which offer apparently will be rejected by the IRS. Whatever the ultimate outcome of his dispute with the IRS, Applicant has the ability and the intent to pay either the full amount owed or such lesser sum as the IRS agrees to accept in compromise.

Applicant has never displayed an inability or unwillingness to pay his debts. Rather, he has used the legal means available to him in efforts to protect his property from a vindictive wife and to reduce the liability that the Government has determined he owes from disallowed deductions from his law practice. No disqualifying condition applies.

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

<sup>8</sup> ISCR Case No. 93-1390 (January 27, 1995) at 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.

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, I find Applicant mitigated the financial considerations security concern. He has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided for Applicant.

### **Formal Findings**

Formal findings for or against Applicant on the allegation set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

|                           |               |
|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a & b:    | For Applicant |

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro  
Administrative Judge

