



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-08494  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

December 30, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to pay income taxes from money he inherited in 1986, leading to a 1997 tax lien that he did not pay. Moreover, he failed to disclose it, as required, on a 2009 security clearance application. Clearance is denied.

**Statement of the Case**

On March 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on June 9, 2010, admitting the allegations. He requested a hearing, and the case was assigned to me on July 6, 2010. On July 21, 2010, a notice of hearing was issued scheduling the case for August 13, 2010. The hearing was conducted as scheduled. I received five government exhibits, six Applicant exhibits, and Applicant's testimony. DOHA received the transcript (Tr.) on August 23, 2010.

### **Findings of Fact**

Applicant is a 51-year-old single man with two adult children. He has been married twice. Both marriages ended in divorce. His children are from his first marriage. (Tr. 14)

Applicant earned an associate's degree in 1984. He served in the United States Air Force from 1979 to 1984. (Tr. 16)

Since at least 1998, Applicant has worked in either the information technology or engineering fields. (GE 1 at 16-21) Currently, he works for a DoD contractor as a systems and design engineer. (Tr. 15) He is the lead field engineer. (AE D)

Applicant is highly respected on the job. According to the operational manager of the program Applicant serves, he is "without a doubt, the hardest working individual on [the] team, and there is no task too monumental for him to tackle." (AE B) According to Applicant's supervisor, "he has a unique combination of systems engineering skills that allow him to design and plan his work, and convey this plan very clearly to the developers and customers." (AE D)

In 1986, Applicant's mother passed away. (Tr. 28) Applicant inherited \$70,000. (Tr. 28) This money stemmed from an individual retirement account (IRA) that his mother owned. (Tr. 29) Unbeknownst to Applicant, after he received the account through probate, he had to "roll it into another IRA" to avoid taxation and penalties.<sup>1</sup> (Tr. 17, 29) He did not do this. Consequently, after a 1992 audit, the Internal Revenue Service (IRS) concluded Applicant owed tax on the income in addition to a ten percent penalty for terminating the IRA. (Tr. 29) The initial tax bill was \$12,000. (Tr. 17)

Applicant failed to pay the income tax deficiency, prompting the IRS in 1997 to obtain a lien against his property. (Tr. 17) By then, the deficiency had accrued to approximately \$18,000. Applicant did not satisfy the lien. He contends he decided not to pay the tax lien after consulting with an IRS agent who told him that the lien would expire after ten years so long as the IRS made no efforts to collect it. (Tr. 18)

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<sup>1</sup>Unlike most income that heirs receive through probate, money from IRAs is subject to taxation. It is unclear from the record who advised Applicant that he could have rolled the inherited IRA income into another IRA to avoid taxation. Under the tax law when his mother passed, the government taxed inherited IRA income regardless of whether the heir rolled it into another IRA. (See 26 U.S.C.A. § 408(d)(iii)(C) (1990))

Currently, Applicant earns \$125,000 annually. (Tr. 41) He has \$20,000 in his checking account. (Tr. 41)

In 1995, the state where Applicant was residing entered a tax lien against his property in the approximate amount of \$1,121. (GE 2 at 1) By 2006, the debt had accrued to \$2,767. (AE A) Applicant testified that he knew of this delinquency, but was unaware the state had entered a tax lien against his property until his interview with a security clearance investigator in 2010. (Tr. 19) By November 2006, Applicant had satisfied this delinquency. (AE A)

Applicant completed a security clearance application in 2009. He failed to disclose either the federal or the state tax lien as required by Section 26 of the application. (*Have you had a lien placed against your property for failing to pay taxes or other debts?*) In his Answer to the SOR, Applicant explained the omission, as follows:

Since I did not own physical or tangible property for a lien to be placed against and my credit report did not show any judgments or liens, I answered the question 'No.' I never deliberately tried to hide any facts . . .

Applicant's discharge status from the Air Force was general under honorable conditions. (Tr. 16) Applicant testified that the fact his discharge was not honorable was not conduct based. Instead, it was because he "requested to get out early." (Tr. 16) During cross-examination, Applicant admitted his discharge occurred as part of a non-judicial punishment for failing a drug test. As part of the punishment, Applicant was also demoted from sergeant to airman first class. (Tr. 22)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel . . .”. The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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 (AG ¶ 18).

SOR subparagraph 1.a reads, as follows:

You are indebted to the Internal Revenue Service for a tax lien entered against you in August 1997 in the approximate amount of \$18,060. As of the date of this Statement of Reasons, it remains unpaid.

Applicant did not satisfy the federal tax lien and contends he no longer is responsible to pay the debt because the statute of limitations expired. For assessments of taxes made after November 1990, the IRS cannot collect or levy any tax more than ten years after the date of the assessment or levy. (U.S. Internal Revenue Code (IRC) § 6323(g)(3)) The IRS has one year after the expiration of the ten-year statute of limitations to refile a tax lien. (IRC § 6323(g)(3)(A)) Here, the IRS entered the federal tax lien against Applicant’s property in 1997. Therefore, it was only valid through 2007. The Government produced no evidence that the IRS refiled the lien. I conclude the tax lien is no longer outstanding.

The expiration of the federal tax lien, however, does not alter the negative security ramifications of Applicant’s decision not to satisfy it while it was enforceable. Consequently, AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

Applicant satisfied the state tax lien, listed in SOR subparagraph 1.b, in 2006. I conclude he has mitigated this subparagraph.

Upon considering the mitigating conditions, I conclude AG ¶ 20(d) partially applies because Applicant satisfied the state tax lien. None of the other mitigating conditions apply. Avoiding the responsibility to pay one’s debts, as Applicant did when he chose to let the statute of limitations for collecting the federal income tax lien expire, rather than pay it, is not demonstrative of fiscal responsibility. Instead, it compounds the financial considerations security concern.

## **Guideline E, Personal Conduct**

The security concern under this guideline is as follows:

[c]onduct involving questionable judgment, lack of candor, dishonesty, 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 (AG ¶ 15).

Applicant's failure to list his tax liens, as required on his 2009 security clearance application raises the issue of whether AG ¶ 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. The credibility of Applicant's explanation for omitting the tax liens is undermined by his untruthful testimony regarding his discharge status from the Air Force. Under these circumstances, I conclude Applicant falsified the security clearance application and none of the mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Applicant earns a good salary and has \$20,000 in his checking account. Typically, such facts serve to minimize financial consideration security concerns. In this case, however, the security concerns are compounded because Applicant chose to avoid his responsibility to pay his federal income tax debt by waiting for the statute of limitations to expire, despite having the means to satisfy the delinquency. Applicant also did not testify truthfully. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concerns.

### **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
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

MARC E. CURRY  
Administrative Judge