



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00897

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

11/21/2017

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for access to classified information. He failed to present sufficient evidence to explain, extenuate, or mitigate the security concern stemming from a history of tax problems consisting of two state tax liens and approximately \$185,000 in back taxes owed to a state tax authority. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on August 8, 2014. This document is commonly known as a security clearance application. Thereafter, on September 12, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the

action under the security guideline known as Guideline F for financial considerations based on two state tax liens for \$31,193 in back taxes.

Applicant answered the SOR on November 1, 2016. He requested a decision based on the written record in lieu of a hearing. His response consisted of a one-page memorandum in explanation. He did not include any attachments or enclosures.

On November 23, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing. The file of relevant material (FORM) consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits in this decision. The FORM was mailed to Applicant on November 28, 2016, who received it January 17, 2017. He replied within 30 days from receipt of the information as required. His reply consisted of a two-page memorandum in explanation without attachments or enclosures, which is made part of the record as Exhibit A. The case was assigned to me October 1, 2017.

Procedural Matters

Upon initial review of the case, I reopened the record on my own motion to provide Applicant an opportunity to provide documentation concerning the two state tax liens at issue. I did so via an e-mail to Applicant and Department Counsel on October 2, 2017, with a deadline of October 17, 2017. Thereafter, I granted Applicant's request for an extension of time during a conference call with the parties on October 16, 2017. Applicant was provided an additional 30 days, with a November 17, 2017 deadline, to provide documented proof that the two state tax liens are resolved or are being resolved. He timely replied, and his response is made part of the record as Exhibits B, C, and D without objections.

Findings of Fact

Applicant is a 61-year-old employee who is seeking to retain a security clearance previously granted to him. He is president, chief executive officer, and chairman of the board of a small company that provides certain components to the U.S. military. His employment history includes honorable service in the U.S. military, both active duty and reserve, ending with his retirement. His educational background includes a bachelor's degree awarded in 1978 by a U.S. military academy. He has held a security clearance for many years during his military service or during his employment in the defense industry or both. He married in 1978, and he and his wife have three adult children.

In his August 2014 security clearance application, Applicant did not disclose delinquent financial accounts, delinquent taxes, or other financial problems.¹ During the subsequent background investigation, he stated that he had no knowledge about the two state tax liens, although he also stated that the liens may be related to his business.² The SOR alleged two state tax liens in the amounts of \$3,193 and \$28,590.

¹ Exhibit 2.

² Exhibit 4 at 4.

Applicant admitted responsibility for the liens in his answer to the SOR. The state tax liens are also established by credit reports from August 2014 and June 2015.³ The reports show that the lien for \$3,193 was filed in December 2013, and the lien for \$28,590 was filed in March 2011. Applicant attributes the tax liens to the operation of his business.⁴ In addition, in May 2010, he satisfied a state tax lien filed against him or his company in November 2009.⁵ The 2009 lien is not alleged in the SOR, and the amount of the lien is not reflected in Applicant's documentation.⁶

Applicant retained the services of a firm to assist him dealing with the state tax authority. In April 2017, Applicant was advised by the firm that the state tax authority had confirmed that he no longer had an outstanding unpaid employment income tax liability.⁷ At the same time, he was advised by the firm that the state tax authority had accepted an installment payment agreement on a total tax liability of approximately \$185,641.⁸ The agreement called for Applicant to pay \$200 monthly beginning October 28, 2016, until his liability is paid in full. Applicant understands that the two state tax liens will remain in effect until the installment payment agreement has been satisfied.⁹

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁰

It is well-established law that no one has a right to a security clearance.¹¹ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."¹² Under *Egan*, Executive Order 10865, and the Directive, any doubt

³ Exhibits 5 and 6.

⁴ Exhibit 3 (Response to Interrogatories); Answer to SOR; and Exhibit A.

⁵ Exhibit B.

⁶ Exhibit B.

⁷ Exhibit C at 1.

⁸ Exhibit C at 2.

⁹ Exhibit D.

¹⁰ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹¹ *Department of the 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 (10th Cir. 2002) (no right to a security clearance).

¹² 484 U.S. at 531.

about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.¹³ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁴

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁵ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁶

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁷ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁸ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁰

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

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 or sensitive information.²¹

¹³ 484 U.S. at 531.

¹⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁵ Directive, ¶ 3.2.

¹⁶ Directive, ¶ 3.2.

¹⁷ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁸ Directive, Enclosure 3, ¶ E3.1.14.

¹⁹ Directive, Enclosure 3, ¶ E3.1.15.

²⁰ Directive, Enclosure 3, ¶ E3.1.15.

²¹ AG ¶ 18.

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

AG ¶ 19(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. A state tax authority placed two liens against him, first in 2011 and then in 2013, for more than \$31,000 in back taxes, and he now owes more than \$185,000 to the state tax authority. In light of the length of time that the liens have been in effect and the large amount of money involved, this is one of the more serious tax cases I have seen for some time. It is a social, civic, and legal obligation to voluntarily pay taxes when due. The failure to pay taxes when due bears close examination and is a matter of serious concern to the federal government.²² This pattern of conduct also suggests that he has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. An applicant who has a history of not fulfilling their tax obligations may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information.

Applicant presented some evidence in reform and rehabilitation. He satisfied a state tax lien of an unknown amount in 2010. He has entered into an installment payment agreement to address his current tax liability with the state tax authority. That's some progress. But he is still facing a mountain of back taxes, which will take years to

²² The General Accountability Office (GAO) expressed serious concern over the relationship between tax delinquents and clearance holders in its July 28, 2014 report, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, <http://www.gao.gov/assets/670/665052.pdf>.

repay at the rate of \$200 monthly on a six-figure tax debt. Moreover, the record suggests that Applicant does not have a good grasp of or handle on his tax obligations. This is established by the fact the he did not report the two state tax liens on his 2014 security clearance application. He also stated he had no knowledge about the liens during the 2014 background investigation. Given his longstanding history of tax problems, additional time is necessary for Applicant to establish that he can remain in compliance with the installment payment agreement. In other words, he has taken the initial steps in the right direction, but he has some distance to travel before he reaches the destination. Accordingly, at this time, Applicant is not an acceptable security risk.

Applicant's history of tax problems creates doubt about his reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept, and I certainly gave Applicant credit for his many years of honorable military service and his years as a clearance holder. Accordingly, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

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

Michael H. Leonard
Administrative Judge