

KEYWORD: Financial

DIGEST: Applicant is a 58-year-old working for a defense contractor. He was indebted to the Internal Revenue Service in the amount of \$3,368 for tax period 1990. For tax period 1987, 1988 and 1989 he owed approximately \$15,181. The tax liens from 1994 have been released. Applicant attempted to pay them recently, but the IRS will not accept any payment. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

CASENO: 07-02130.h1

DATE: 09/14/2007

DATE: September 14, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 07-02130
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant is a 58-year-old working for a defense contractor. He was indebted to the Internal Revenue Service in the amount of \$3,368 for tax period 1990. For tax period 1987, 1988 and 1989 he owed approximately \$15,181. The tax liens from 1994 have been released. Applicant attempted to pay them recently, but the IRS will not accept any payment. Applicant has mitigated security concerns arising under financial considerations. Clearance is granted.

STATEMENT OF THE CASE

On February 13, 2006, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). On May 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why, under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006, DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue a security clearance for Applicant. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR on June 4, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 27, 2007. After agreement with both counsel, I scheduled a hearing for August 22, 2007.

The hearing was convened as scheduled on August 22, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Government exhibits (GE 1-4) were admitted without objection. Applicant did not submit any exhibits at the hearing. Applicant testified in his own behalf, as reflected in the hearing transcript (Tr.) received on August 29, 2007. I left the record open so that Applicant could supplement the record. He timely submitted a document marked as AE A. Department Counsel had no objection.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR ¶¶ 1.a and 1.b are incorporated herein.¹ In addition, after a thorough and careful review of the evidence and exhibits, I make the following findings of fact:

Applicant is a 58-year-old working for a defense contractor. He graduated from high school in 1967. He is twice divorced and has four grown children.² Applicant has been employed with his current employer since 2005.³

Applicant had a successful business from 1980 until 1985. In 1985, his brother-in-law bought into the business encouraged by Applicant's father. His sister agreed to take care of the financial books. In 1985, the Internal Revenue Service (IRS) visited Applicant's place of business and closed

¹Applicant's response to the SOR, dated June 4, 2007.

² Government Ex. 1 (Security Clearance Application, dated February 13, 2006).

³*Id.*

it. Applicant learned that his sister and brother-in-law had not paid the taxes to the IRS. The amount due to the government was \$108,000. Applicant paid the entire amount to the IRS.⁴

After the business closed, Applicant found it difficult to find employment. He had been in the automotive repair business, but wanted to return to work in the electronics field. At the same time, his first marriage failed. He lost his home and a great deal of income. He was on unemployment for a period of time. Eventually he found employment but at a reduced pay of \$9 an hour.⁵

When Applicant remarried in 1983, he had some problems with his new wife's ex-husband. A law matter was filed against Applicant for reasons that are not relevant to this case. Despite the fact that the matters were dropped, he lost his job. He and his wife had to move in with his parents for two years due to financial problems. He had many legal fees to pay. During this time, Applicant could not pay his federal tax for tax periods ending 1987, 1988, 1989, and 1990. Applicant found steady employment but was laid off in 1997.⁶

After that, he could only find employment at reduced pay rates. He paid many fees to lawyers at the time. Instead of paying his taxes, he paid his lawyers. He had no money and thus did not pay the taxes. There is no evidence in the record that he did not file at that time, although he does not remember.⁷

A federal tax lien was filed on August 1994 in the amount of \$3,368 for non-payment of a delinquent tax for tax period ending December 31, 1990. On January 15, 1993, a federal tax lien was filed for non-payment of delinquent tax debt in the amount of \$15,181 for tax periods ending December 1987, 1988 and 1999.⁸

He now takes care of his elderly parents. He provides for his family. He sent his children to college. He bought his wife a car. His credit is fine now. He has no delinquent debts. He is current with his home mortgage.⁹

Applicant hired a law firm to help him sort out the tax liens with the IRS. He did not have any property for so long and did not have any money that he put the taxes in the background. He contacted the law firm to see if he could make a settlement offer. The law firm provided some

⁴Tr. 16; GE 3 (Financial Interrogatories).

⁵Tr. 17.

⁶Tr. 18-19.

⁷Tr. 26.

⁸GE 2 (Credit Bureau Report),

⁹GE 3 *supra* note 4.

generic advice. Applicant paid them more than \$4,000 recently. Then he learned that the liens had not been re-filed.¹⁰

Applicant visited the IRS office in 2006. He inquired about the liens and wanted to make payment. He was told that the liens had been released. Prior to his visit, he did not know that the liens will expire normally after a period of time. He went to the courthouse to obtain documentation. They did not have anything to give him. The IRS will not accept any money from Applicant at this time because the liens have expired.¹¹

Applicant earns approximately \$4,444 net a month.¹² After his expenses, he has a net remainder of \$1,512. He has a very good credit rating. He has no adverse account information. He is in a good position at this time and is financially stable.

Applicant has worked his entire life and takes pride in his achievements. He had some difficult circumstances regarding his loss of employment and failed business but he continued to live his life and provide for his family. He received an excellent performance evaluation in his current employment.¹³

POLICIES

The revised Adjudicative Guidelines (AG) set forth set forth both disqualifying conditions and mitigating conditions applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature, extent and seriousness of the conduct and surrounding circumstances; (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. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.¹⁴ The government

¹⁰Tr. 23.

¹¹AE A and B (Certificate).

¹²Government Ex. 2 (Credit Bureau Report, dated March 10, 2006).

¹³AE C (Performance Evaluation).

¹⁴ ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).

has the burden of proving controverted facts.¹⁵ The burden of proof is something less than a preponderance of evidence.¹⁶ 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.¹⁷ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸

No one has a right to a security clearance¹⁹ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²² It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. Based upon consideration of the evidence, I find Guideline F of the revised AG most pertinent to the evaluation of the facts in this case. That guideline reads in pertinent part:

Guideline F - Financial Considerations. *The Concern: 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.*²³

In this matter, the government provided substantial evidence that Applicant had two tax liens from 1993 and 1994. Consequently, Financial Considerations Disqualifying Condition (FC DC), AG ¶ 19(a), (*inability or unwillingness to satisfy debts*) and FC DC, AG ¶ 19(c), (*a history of not meeting financial obligations*) apply.

¹⁵ ISCR Case No. 97-0016 at 3 (App. Bd. Dec 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁷ ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. 518, at 531.

²⁰ *Id.*

²¹ *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

²² Executive Order 10865 § 7.

²³ AG ¶ 18.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. Several incidents occurred in Applicant's life over which he had little or no control. His failed business, separation and divorce, combined with his loss of employment in 1997, lower paying jobs for a period of years and legal fees substantially contributed to his inability to pay his taxes. Therefore, FC MC, AG ¶ 20(b), (*the conditions that resulted in the behavior 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*) partially applies.

The tax liens are the result of not paying taxes from 1987 through 1990. Applicant did not have the money to pay at that time. He perhaps made an error and paid other bills and legal fees rather than the taxes. He now understands the severe consequence of not paying taxes. He is now in a position to continue in employment with no delinquent debts. Therefore, Financial Considerations Mitigating Condition (FC MC), ¶ AG 20(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*) applies.

Applicant did not receive financial counseling, but he hired lawyers to assist him with his tax liens. However, the tax liens are released. He has no other financial difficulties. The tax issue is resolved. FC MC, AG ¶ 20(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*) does apply to some extent.

In the past years, Applicant did not have sufficient income to pay the tax liens. He paid his initial debt to the IRS and paid all legal fees that he incurred for some incidents that were beyond his control. He went to the IRS office to pay his tax liens recently and learned that they were released due to age. He stood ready to pay them. Therefore, FC MC, AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to a degree.²⁴

Whole Person Analysis

I have considered both the record and Applicant in light of the "whole person" concept. He is an earnest, mature man who was recounted his negative experiences and how he persevered. His testimony at the hearing was candid and straightforward. At the hearing he acknowledged the financial delinquencies would be considered a negative. He is open, honest and has not hidden the

²⁴The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in such a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

situation. He believed his choice to pay legal fees and other debts was the reasonable action at the time. He has not incurred any delinquent debt in two years. His financial circumstances have improved. The potential for pressure, coercion, exploitation, or duress is low. He is current on his financial obligations, and has a very positive employment history. A greater awareness of financial responsibilities will result in a continuously improving trend of financial circumstances.

In sum, the likelihood of new debt problems is low. Applicant's financial case shows his willingness to utilize his resources. I conclude he has mitigated the security concerns pertaining to financial considerations. Clearance is granted.

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 (Financial Considerations):	FOR APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant

DECISION

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

Noreen A. Lynch.
Administrative Judge