



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



In the matter of: )  
)  
) ISCR Case No. 17-03313  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2019

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on March 2, 2015. On February 8, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.<sup>1</sup>

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<sup>1</sup> Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines for all adjudicative decisions issued on or after June 8, 2017.

Applicant answered the SOR on March 8, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2018. On September 19, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 18, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. At Applicant's request, I kept the record open until November 19, 2018, for additional submissions. Applicant submitted (AX) I (a packet of documents) in a timely manner. The exhibits was entered into the record without objection. DOHA received the transcript (Tr.) on October 25, 2018. The record closed on November 20, 2018.

### **Findings of Fact<sup>2</sup>**

Applicant is a 47-year-old employee of a federal contractor. He has worked for defense contractors for about 10 years. Applicant graduated from high school in 1992. He is currently working two jobs. He has held a security clearance since 2006. Applicant divorced his first wife in 2002. He remarried and has four minor children and two adult children.

### **Financial**

The SOR alleges in 1.a-1.i, a 2005 chapter 7 bankruptcy which was discharged in 2006; failure to file Federal and state income tax returns for at least tax years 2007 through 2016; delinquent state taxes in the amount of \$16,780; delinquent Federal taxes in the amount of \$43,717; a 2011 state tax lien in the amount of \$7,975; a 2009 Federal tax lien in the amount of \$16,528; and seven collection accounts totaling about \$5,245.

Applicant acknowledged that the 2005 bankruptcy was the result of his divorce and that it was discharged in 2006. (SOR 1.a) He explained that a custody battle ensued until 2012, and as a result he incurred legal fees and other expenses. Applicant agreed that he did not file his Federal or state income tax returns from tax years 2007 through 2016, as required. (SOR 1.b) He disputed the amount of the state delinquent taxes as well as the Federal delinquent taxes. (SOR 1.c and 1.d) He presented documentation that beginning in 2017, he started a payment agreement with the state for money due in the amount of \$10,960. The agreement calls for \$327.43 monthly for 36 months. (AX E) The record did not contain any payment receipts under this agreement.

As to SOR 1.f, a 2011 state tax lien in the amount of \$7,975, Applicant submitted a Release of tax lien, dated May 2018. (AX F) As to SOR 1.g, a Federal tax lien in the amount of \$16,528, Applicant submitted a Certificate of Release, dated February 2018. (AX C)

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<sup>2</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

Applicant could not explain why he did not timely file his Federal and state income tax returns. (Tr. 41) He began filing them in 2010 and 2017. (GX 2) He believed that for some of the tax years, he asked for an extension, but he could provide no documentation. It does appear from an email that in 2009, he requested an extension of time for that year. (AX I) At this time, all the tax returns from 2007 through 2016 have been filed. (GX 2)

Applicant contacted Nationwide tax negotiators in 2008, but there is no documentation that he made any payments. In late 2009, Applicant contacted American Tax Solutions (Tax Defenders). It appears from documentation that Applicant started a payment plan with the IRS. The payments were \$50 a month. He made approximately four payments. Applicant received a notice from them that as of January 2010, the IRS wanted to collect \$20,374. In 2011, Applicant's wages were garnished for a judgment. (AXI) At some point in time, Applicant contacted OPTIMA and began addressing his IRS tax liabilities. (AX D)

Applicant has been in a staggered installment agreement with the IRS for tax years 2010-2016 since 2018 according to the OPTIMA report. (AX D). Since July 2018, Applicant has paid the IRS \$10,200. (AX D) This report reflects three payments made to the IRS starting in July 2018. A payment of \$300 was made in July and in August 2018. (AX B, D) Another payment of \$9,600 was made in July 2018. The report has several pages missing. One pages states that Applicant asked for an extension for the 2017 tax return. (AX D) It appears from this report that Applicant still owes about \$44,000 in delinquent debt to the Federal government. Applicant did not provide tax transcripts as promised as part of his post-hearing submission packet.

Applicant denied all the financial SOR allegations concerning the collection accounts in SOR 1.e, 1.h through 1.i. The reasons that he gave for the denials of the various collection accounts were that he was not aware of the accounts. (Tr. 77) He also stated that the accounts are no longer on his credit report. Applicant also recalls successfully disputing some accounts. Applicant had no receipts for any bills that he believed he paid.(SOR) Applicant had no documentation that he paid any of the debts, except for presenting a partial credit report that showed certain debts had been removed from his report. (AX I ) Applicant could not find any other receipts for debts he believed he had paid. Several times, Applicant stated that he presented relevant documentation to the investigators. (Tr. 77)

Applicant has not received financial counseling. He earns about \$150,000 from one job and about \$53 an hour from another job. (Tr.32) His wife is a federal employee earining about \$160,00 a year. He has a retirement account of about \$12,000 and about \$2,000 in savings. He purchased a home in 2018 for \$520,000, making a down payment of \$30,000. He obtained extra money from the home loan and paid \$9,600 to the IRS in July 2018. (Tr. 74) His monthly mortgage is \$5,000 a month. His child support payments ended in 2012.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline is set out in AG ¶ 18:

Failure 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, and failure to pay Federal and state taxes that became delinquent, establish three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); AG ¶ 19(c) (“a history of not meeting financial obligations”); and 19(f) (“failure to file . . . or pay annual Federal, state, or local . . . income tax returns as required.”)

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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.

Applicant has a history of not filing his Federal and state tax income returns in a timely manner as required by law. For multiple years going back to at least 2007 through 2016. Applicant did not file for any articulated good reason. AG 20(a) does not apply. He was divorced and that contributed to his 2005 bankruptcy, but delinquent Federal and state tax liens and delinquent debt went on for many years. He explained various attempts he made with various tax negotiators, but his installment plan with the IRS began in 2018. He had Federal and state liens, which he has paid, but recently. As to the collection accounts, Applicant disputed them or stated that they were paid, but provided no documentation other than a part of a credit report that showed some accounts had been removed. It is not known whether they were paid or fell off due to passage of time. He was given time to produce receipts, but he did not. AG 20(b) only partially applies because I do not find that his attempts to work with various tax negotiators for many years without a durable payment plan, shows that he acted responsibly. He paid his Federal and state liens and receives credit for doing so. The arrangements that Applicant made with the IRS started in 2018. He has no track record. The tax liability is about \$44,000. Considering the recency of his payment plan, his financial situation is not under control at this time. AG 20 (c) and (g) do not fully apply.

.Applicant has not received financial counseling and did not provide a budget. He and his wife are employed. He bought a home in 2018 and his mortgage is \$5,000 a month. He has presented insufficient information to show that he has the problems under control. Applicant has not mitigated the financial considerations security concern.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful

consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 has held a security clearance since 2006 and worked in the contracting field for a number of years. He was divorced in 2002 and filed bankruptcy as a result of the divorce and legal bills. Due to a long passage of time the bankruptcy is found in his favor. He paid the Federal and state tax liens recently. However, his failure to timely file his Federal and state income tax returns for so many years with no real explanation provides me with doubts as to his judgment and responsibility. He has begun a payment agreement plan with the IRS in 2018. This is too soon to provide mitigation. He had collection accounts and claims that they have been disputed or have been removed from his credit report. This does not provide mitigation in this case. Applicant was confused about some of the tax years that he did not file and believes that since he has been attempting to work with various tax negotiators for years that he has shown good faith efforts. He is working two jobs and his wife is employed. He still owes a sizeable amount of money to the IRS. He recently purchased a \$500,000 home and put \$30,000 for a down payment, which suggests he has ample resources to address his tax and non-tax debts. He did use some money from the closing to pay an amount for taxes.

He is making some strides with his delinquent taxes and paid two liens but he has not presented sufficient information to mitigate the security concerns raised by his financial considerations security concerns

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-e:	Against Applicant
Subparagraphs 1.f-g:	For Applicant
Subparagraph 1.h-l:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch  
Administrative Judge