



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



In the matter of:)	
)	
)	ISCR Case No. 17-03640
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2019

Decision

Gregg A. Cervi, 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 (SCA) on September 12, 2016. On November 27, 2017, 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; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The Adjudicative Guidelines (AG) were revised effective June 8, 2017, and apply herein. Applicant answered the SOR on January 25, 2018, and requested a hearing.

The case was assigned to me on October 3, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2019, scheduling the

hearing for April 8, 2019. The hearing was convened via video teleconference, as scheduled. Government Exhibits (GE) 1 through 6 were admitted into evidence without objection. Applicant testified. The record was held open to permit Applicant to submit documentary evidence in mitigation. Applicant Exhibit (AE) A was submitted, which include tax notices and portions of tax returns. AE A was admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on April 18, 2019.

Findings of Fact

Applicant is a 58-year-old trainer, employed by a defense contractor since 2012. He graduated from high school in 1979. He was previously married in 1985 and divorced in 2013. He has four adult children, but continues to pay child support for one special needs child. He served on active duty in the U.S. Army from 1979 to 1982, and in the Army Reserve since 1982. Applicant has held a security clearance for 40 years since first entering the Army. In 2007, The Department of the Army warned Applicant about delinquent debts when his clearance was renewed.

The SOR alleges Applicant is delinquent on five debts totaling over \$97,000, and he failed to file and pay Federal income taxes for tax year 2016; owes the IRS for income taxes due for tax years 2014 to 2016; and has two state tax liens from 2013 and 2015. Applicant admitted the SOR allegations, but explained that his 2016 tax return was filed when due, but the taxes were not paid.

Applicant attributes his poor financial status largely to his 2013 divorce. He noted that his spouse handled household financial matters including taxes. They purchased a home in 1998, and Applicant left the home in 2012 after his spouse left. They agreed to list the home for three to six months, but were unable to sell it. Applicant stopped payments when he left for a job in another state. A foreclosure action was started in 2017, and Applicant is past due about \$85,000. He has done nothing to determine the status of the debt or to attempt to resolve it. (SOR 1.a) Applicant noted that after the divorce, he had difficulty transitioning to single living and paying bills on his own.

Applicant is past due on a loan that he claimed was taken out with his ex-spouse for about \$1,000. His credit report shows the loan was in his name individually. In response to Government interrogatories, Applicant was unaware of the debt. In testimony, he claimed that he has a payment agreement with the creditor and paid the loan off, but he did not provide evidence of the agreement or evidence that the loan has been paid, despite discussing it at the hearing. (SOR 1.b) This debt remains unresolved.

Applicant provided evidence that his 2016 Federal tax return was filed when due, but he failed to pay the income tax owed. (SOR 1.c) Applicant admitted that he owed Federal taxes for 2014 to 2016, that he did not have the money to pay his taxes on time, and that he was slow about contacting the IRS to make payment arrangements. (SOR 1.d) However, the documentation he provided from the IRS shows he was behind on income tax payments for tax years 2012 to 2016, causing him to owe interest, penalties or other charges, totaling \$23,340. His pay was garnished and in 2016, he contacted the

IRS and made an arrangement to repay past-due income taxes. He borrowed money from his 401k retirement program and made three sizable lump-sum payments in January and February 2017, then paid monthly to June 2017. By July 2017, he reduced his tax liability to \$7,424, and apparently continued to pay. In March 2019, the IRS applied Applicant's 2018 refund (\$532) to the remainder of his 2016 tax liability, and paid off the balance. Applicant's tax preparer assisted him in adjusting his income withholding to cover his future tax liabilities. This debt is resolved.

Applicant owes state taxes resulting in liens filed in 2013 and 2015, totaling \$4,369. He has not shown sufficient efforts to resolve these debts and they remain unpaid. (SOR 1.e and 1.f)

Applicant has not sought financial counseling and earns about \$92,000 annually. He has about \$700 net savings per month after paying expenses, and has about \$2,000 in a savings account. In 2018, he paid a state income tax liability from 2015 owed to another state, and intends to continue to pay other debts as appropriate according to his financial ability.

Law and 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.

National security eligibility 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG 1(d).

Analysis

Financial Considerations

The security 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. . . .

The relevant disqualifying conditions under AG 19 include:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant's admissions and the documentary evidence are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG 20 are potentially relevant:

(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;

(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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(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's financial status was likely negatively impacted by his divorce, however, he admitted to difficulty transitioning to life on his own, and did not adequately take responsibility for his own financial obligations. He filed his income tax returns when due, but did not pay taxes owed. He completed a payment plan with the IRS to resolve his Federal tax obligations, but has not resolved his delinquent state tax obligations. There is insufficient evidence that he has attempted to resolve the remaining SOR debts.

The Appeal Board has long held:

Security requirements include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Failure to comply with Federal tax laws suggests

that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

Applicant's lack of financial responsibility with regard to tax obligations and other debts show a history of financial difficulties that have not been overcome to date. There is no evidence that Applicant has sought financial counseling or assistance with his debts except for tax preparation services. He has not shown efforts to contact creditors and state tax authorities to resolve debt, despite significant time since the Government first showed its concern with his delinquent debts. Overall, based on the record presented, I am unable to conclude that Applicant's financial problems are under control or are unlikely to recur. No conditions fully apply to mitigate his delinquent state tax obligations and other debts. Applicant is credited with filing his Federal income taxes when due, and he satisfactorily resolved his Federal tax obligations through a payment plan.

Whole-Person Concept

Under AG 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG 2(d). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant's personal difficulties do not overcome his history of financial irresponsibility, especially with respect to tax obligations, despite his long history of security clearance eligibility and military service.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

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
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	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.

Gregg A. Cervi
Administrative Judge