



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00917
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

10/02/2019

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**Decision**

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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 June 26, 2017. On April 24, 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; 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 (Ans.) on May 15, 2018, and requested a hearing.

The case was assigned to me on February 25, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2019, scheduling

the hearing for June 6, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant, his spouse, and a witness testified. Applicant Exhibits (AE) A-D were admitted into evidence without objection. The record was held open to permit Applicant to submit additional documentary evidence in mitigation. AE E was submitted, which includes an email narrative, tax returns, and other financial documents, and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 17, 2019.

### **Findings of Fact**

Applicant is a 54-year-old pilot instructor, employed by a defense contractor since 2017. From 2005 to 2013, Applicant worked as a retail salesman, a director of a youth club, a fireplace technician, and as a rock climbing guide and yoga instructor. He next operated a lodge business with his current spouse from May 2013 until the business failed in February 2014. He was unemployed for about one month in 2014 while he requalified for his pilot's license, then he worked as an airline pilot from 2014 to 2015, and as a contract military instructor pilot from 2015 to 2017. (GE 1) Applicant twice filed Chapter 7 bankruptcy; first in 2000 that was discharged in 2001, and next in 2010 that was discharged in 2011.

Applicant received a bachelor's degree from a U.S. military academy in 1986, and served on active duty in the U.S. Air Force until he was honorably discharged in 1998. (Tr. 9) He was previously married in 1990 and divorced in 2001. He remarried in 2007, and has four adult children. Applicant held a security clearance while on active duty until he was discharged in 1998 (Tr. 7).

The SOR alleges under Guideline F, that Applicant filed a Chapter 7 bankruptcy in 2010 that was discharged in 2011; failed to file Federal income tax returns for tax years 2010 to 2016; is delinquent on unpaid state sales tax totaling about \$2,000; and two delinquent real-estate timeshare debts totaling over \$15,800. Applicant admitted the bankruptcy, Federal income tax filing delinquency, and state sales tax allegations, and denied the two timeshare debts. (Ans.) He noted in his answer to the SOR, that he was working on the delinquent Federal tax returns, and that the state sales tax debt is paid.

Applicant first filed Chapter 7 bankruptcy in 2000 as a result of about \$200,000 in debt largely incurred in treating his first spouse's alcohol and drug problems, and mental instability. He testified that her problems became apparent in 2000, and that her drug and alcohol abuse drove them into bankruptcy "with [his] permission at the time," because he willingly used treatment centers that cost as much as \$900 per day. He also developed his own health issues causing him to resign his job and move to another state, but could not find executive level employment. (Tr. 42-44) Applicant's second spouse worked and cohabitated with him beginning in 2003, and contributed to household income. However, Applicant claims that some credit card debts "slipped through the cracks" and were not listed in his first bankruptcy filing. Applicant claims that creditors began pursuing about \$13,000 in delinquent debt, interest and fees, seven years after his first bankruptcy. (Tr. 46) A judgment was entered against Applicant in 2004 and a delinquent credit-card

account opened in 2002, well after his first bankruptcy. (Tr. 46-47) He filed his second Chapter 7 bankruptcy in 2010, and discharged about \$33,000 in liabilities in 2011. (GE 5) Appellant's spouse testified that they are in the process of exploring filing another bankruptcy (Tr. 29, 34). In Applicant's post-hearing submission, he provided evidence that he and his spouse completed internet credit counseling mandated by the bankruptcy court on June 20, 2019, the day before the hearing in this case. (AE E)

SOR ¶¶ 1.d and 1.e allege debts to a financial company on timeshare properties, totaling about \$15,818. In 2011, Applicant purchased an interest in two timeshare properties, but refused to pay a debt incurred because he believed the seller operated in bad faith. (Tr. 48-51) Appellant's spouse disputed a debt to the credit bureaus, and reported the results were "inconclusive." (Tr. 51) Applicant testified that he "gave the property back." (Tr. 50) The debts were reported on Applicant's combined 2017 credit report (GE 3), but do not appear on his August 2018 Equifax credit report (GE 4). In his post-hearing submission, Applicant provided a "screen shot" from a free online credit access company, suggesting a dispute filed against a known debt collection agency, and a separate page showing a collection account for the timeshare debt in question. The debt collection company dispute was apparently filed in 2016, and Applicant noted in handwriting on the document, that no response was received on the dispute as of June 21, 2019. (AE E) It is unclear whether the page showing the debt collection company dispute is related to the page showing the timeshare debt. The timeshare debt page only shows that the joint account was opened in 2014, and it was placed for collection. (AE E) Of note, Applicant's 2017 credit report does not show the timeshare debt being collected by the debt collection agency, or any other collection agency. (GE 3) Finally, no clear documentary evidence was presented showing the current status of the timeshare debts, communications with the creditor, or a final resolution of the debts was provided.

Applicant did not file Federal income tax returns when due, for tax years 2010 to 2016. During the hearing, he admitted that he also failed to file his 2017 or 2018 Federal income tax returns when due. Although Applicant's spouse primarily handled tax return preparation for the family, Applicant knew that she was not filing returns. (Tr. 39) Applicant testified that:

At the time it's – it's an old pilot deal. Here's everything that's on my plate to do, here's what I have the capacity to effect [sic] so I let the taxes go." (Tr. 56) Needless to say, I am not good at taxes and I intentionally delayed them until I could reasonably get to them and until we had the resources to actually hire a new CPA to help us with it and found the right one. So I suck at taxes. (Tr. 63-64)

Applicant's spouse testified that tax returns went unfiled, in part, as a result of a sexual assault of her by their tax accountant in 2008. She did not disclose the assault to Applicant until 2013 or 2014, nor did they report the assault to authorities, but they continued to use the same accountant for several years after the incident. (Tr. 36-37) Of note, Applicant's spouse was also caring for her parents in around 2008, and was suffering from her own illness which led to her employment termination in 2012 and a

diagnosis of a brain tumor in 2013. (Tr. 36-37) She has not worked since 2013, except for their lodge business, purchased in March 2013 and ended in February 2014. The business failure resulted in foreclosure of the lodge property and about \$250,000 in losses. (Tr. 29, 33; GE 2)

Applicant filed his 2010 Federal tax return in April 2015. His 2011 and 2012 Federal tax returns were completed and signed on June 4, 2019, two days before his hearing in this case. (AE A and B) Federal tax returns for 2013-2018 were completed and signed on June 21, 2019, the date the post-hearing submissions were due. The post-hearing submission included Federal e-filing authorizations for his 2017 and 2018 tax returns, also completed and signed on June 21, 2019. There is no documentary evidence showing the 2013 to 2016 tax returns were submitted to the IRS. Of note, Applicant stated in his post-hearing email that: “[a]ll documents are being sent certified mail or have already been e-filed.” (emphasis added) (AE E)

Applicant reported in his SCA and his interview with a Government investigator, that he owed a state government \$1,000 to \$2,000 for unpaid sales tax. (SOR ¶ 1.c) He noted in his interview, that he received letters from the state tax authorities, but that he did not have the money to pay the debt. In his post-hearing submission, Applicant provided documentary evidence that two state tax liens from the state in question totaling approximately \$1,616, were released on October 23, 2017. It is unclear from the evidence whether the two satisfied liens are related to the state sales tax debt.

Applicant’s colleague testified in support of Applicant’s honesty and trustworthiness. They have worked together as pilots on government contracts since 2015. In addition, Applicant submitted a letter of support from his current site manager, who attested to Applicant’s work ethic, integrity, dedication, leadership skills, and trustworthiness with classified information. Applicant’s current income is about \$9,000 per month, and he has about \$4,500 in savings.

### 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.

Six mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

Considering the evidence as a whole, I find that none of the mitigating conditions are sufficiently raised by the evidence. AG ¶ 20(a) does not apply because Applicant's financial problems are frequent, recent, and continued for a number of years. Applicant has filed two Chapter 7 bankruptcies, and is contemplating a third. He failed to file nine years of Federal income tax returns when due. He completed the 2013 to 2018 tax returns after his hearing, and returns for 2010 to 2012 were completed two days before the hearing. Evidence of actual filings of the returns was only supplied for tax years 2010, 2017 and 2018. AG ¶ 20(g) partially applies to the tax returns actually filed and resolved with the IRS, but does not mitigate the overall failure to file tax returns on time or within a reasonable time after missing the deadline.

Applicant and his spouse have suffered from periods of reduced income, illnesses, job loss, and a short-term failed business, however, Applicant has not sufficiently explained why those matters prevented him from filing tax returns or paying debts when due, or resolving financial delinquencies in a timely manner. None of the periods in which his difficulties arose fully apply to the delinquent tax filing periods or failure to timely satisfy delinquent debts, and do not mitigate his lapses in financial responsibility.

It is unclear from the evidence whether the two released state tax liens are related to the state sales tax debt alleged in the SOR, however I give Applicant the benefit of the doubt. Resolution of the tax liens are sufficient to satisfy Applicant's stated debt to the state, as no other evidence exists showing a state sales tax debt exists. Additionally, the evidence does not clearly establish a bona-fide dispute was filed over the timeshare debts, but I also give the benefit of the doubt to Applicant who provided evidence of an effort to dispute debts. SOR ¶¶ 1.c – 1.e are resolved in favor of Applicant.

Applicant established circumstances beyond his control that may have contributed to or aggravated his inability to resolve debts in a timely manner, however, I find that Applicant failed to establish that he was financially responsible under the circumstances and made good-faith efforts to timely resolve the debts as required by mitigating conditions AG ¶¶ 20(b) and (d). In addition, he presented little evidence of reasonable efforts to file tax returns until after they became a noted concern that directly impacted his security eligibility. Finally, Applicant has received financial counseling in relation to his bankruptcy filings, but despite this, he has not shown clear indications that his financial problems are under control or that he is financially responsible.

Applicant intentionally neglected his legal obligation to timely file his Federal income tax returns for a number of years. "Failure to comply with federal and state tax laws suggests that an applicant has a problem with abiding to well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information." ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). This is true even if the returns have been filed. See, ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016). His history of bankruptcies and failure to file his federal income tax returns and pay debts in a timely manner, does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, ISCR Case No. 14-01894 at 5 (App. Bd. Sept. 27, 2016).

Applicant failed to demonstrate a history of financial responsibility, and I am unable to reasonably determine that future delinquencies and failure to comply with tax obligations are unlikely. The financial considerations security concerns are not mitigated except as noted above.

### **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. Despite Applicant's history of security clearance eligibility, education, and military service, he has not shown a history of financial responsibility. His personal and family difficulties do not explain his blatant and persistent failure to comply with Federal tax law, or to show financial responsibility.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national interest 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 – 1.e:	For Applicant

## **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge