



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 18-02914
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: Mark A. Myers, Esq.

09/17/2019

**Decision**

HESS, Stephanie C., Administrative Judge:

Applicant mitigated the financial considerations security concerns raised by his 2015 Chapter 7 bankruptcy and his tax-related issues. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on February 14, 2017. On March 8, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Ex. 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 DOD on September 1, 2006.

Applicant submitted his Answer to the SOR April 3, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 18, 2019, and the case was assigned to me on May 16, 2019. On June 7, 2019, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant's attorney that the hearing was scheduled for June 26, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted into evidence without objection. Applicant testified, called one witness, and Applicant's Exhibits (AX) A through N were admitted without objection. DOHA received the transcript (Tr.) on July 8, 2019.

### **Findings of Fact**

Applicant is a 47-year-old systems administrator currently employed by a defense contractor since April 2017. He received his bachelor's degree in 1997. He and his wife married in 1994 and have four children. This is Applicant's first application for a security clearance. (GX 1.)

Under Guideline F, the SOR alleges that Applicant filed Chapter 7 bankruptcy in 2015; failed to file his 2013 through 2017 federal tax returns; is indebted to the federal government for \$7,832 for tax year 2011; and owes \$34,910 for a federal tax lien entered against him in 2013. Applicant admits the bankruptcy, failing to file his taxes, and the delinquent taxes owed for 2011. He denies the federal tax lien. His admissions are incorporated in my findings of fact.

Before 2013, Applicant and his wife were financially stable and able to support their family of six. In June 2013, Applicant's wife became the legal guardian of her then-10-year-old cousin after his stepmother died from an illness and his father entered inpatient treatment for drug abuse. Adding another person to the household, bringing the total to seven, caused increased financial strains on Applicant. Additionally, Applicant had one daughter in college and Applicant's wife went back to school full time. Applicant became the sole financial provider for the household. Throughout their marriage, Applicant's wife was responsible for handling the family finances. During this period of greater financial obligations, she overspent and "let our finances get ahead of us." (Tr. 72.) Upon learning of their overextended financial situation, Applicant met with an attorney who advised him to file bankruptcy, which he did. He and his wife participated in financial counseling and marriage counseling, in part, to prevent future financial crises. (Tr. 22-23.)

Between about 2009 and 2011, Applicant was working in another state. In about 2015, Applicant was contacted by the IRS and informed that he had not been properly taxed by his employer while working in another state and that he owed taxes for 2011. Initially, the IRS informed Applicant that the delinquent tax amount was \$34,910, as alleged in SOR ¶ 1.d. Applicant's attorney listed this amount in Applicant's Chapter 7 bankruptcy petition. However, Applicant subsequently disputed the amount claimed by the IRS and the IRS recalculated the amount to \$7,832 (SOR ¶ 1.c). (GX 2.) Applicant entered a repayment agreement with the IRS in January 2014, wherein \$125 a month was automatically debited from Applicant's bank account. As of July 1, 2019, the balance was \$4,519. However, the IRS applied a portion of Applicant's refund from tax year 2017 to this debt and it is now satisfied. (Tr. 35-36; GX 2; AX N; AX I; Tr. 28-30; Tr. 62-63.)

Applicant and his wife did not timely file their income tax returns for 2013 through 2017. The reason for this failure to timely file is twofold. First, Applicant's wife was operating under the erroneous idea that she had three years to file her tax returns if she was owed a refund. Second, in attempting to use tax-preparation software, she entered her cousin's social security number to claim him as a dependent and the entry was rejected. Applicant's wife later discovered that her uncle had been claiming her cousin as a dependent, despite the fact that Applicant's wife had legal custody of the child. (Tr. 35.) Resolving this issue required that Applicant's wife manually complete the tax returns. Because this process was time-consuming and difficult, and because she misunderstood the filing requirements, Applicant's wife put off filing the returns. (Tr. 35-36; Tr. 85.) She has since filed all of the returns. (AX A through AX H.) Applicant timely filed his 2018 tax return. (AX H.) Applicant does not owe any outstanding taxes.

Applicant and his wife now share the responsibility of managing the household finances. Applicant's wife's cousin no longer resides with them, and only their youngest child remains in the household. (Tr. 64; Tr. 18.) Applicant does not have any current or recent delinquent accounts and lives within his means. He is a committed and valued employee who has received outstanding performance evaluations and multiple awards and recognitions. (AX K; AX L.) His coworkers highly recommend Applicant for a security clearance and characterize him as trustworthy, honest, and reliable. (AX M.) Applicant was candid, sincere, and credible while testifying.

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. 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.” See 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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

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

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....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting

classified information. An individual 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).

The record evidence establishes three disqualifying conditions: AG ¶ 19(a): inability to satisfy debts; AG ¶ 19(c): a history of not meeting financial obligations; and AG ¶ 19(f): failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

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's financial difficulties arose under unique circumstances and were due to conditions largely beyond his control. Specifically, Applicant unexpectedly became the sole financial provider for a household of seven, two of whom were attending college. Applicant's wife was responsible for managing the household finances and admits to overspending. Upon learning of their financial situation, Applicant acted responsibly by seeking and following the advice of an attorney, and discharging his debts through the legal remedy of Chapter 7 bankruptcy. Applicant and his wife participated in financial counseling.

The \$7,832 owed for delinquent taxes for 2011 arose due to an error made by Applicant's employer. Upon learning of the delinquent taxes and the initial amount claimed by the IRS (SOR ¶ 1.d), Applicant disputed the amount. The IRS recalculated

(SOR ¶ 1.c) and Applicant entered a repayment plan in January 2014. The tax debt has now been satisfied.

Within their household, it was Applicant's wife's responsibility to file the tax returns. Applicant was unaware that his wife had not timely filed their returns for tax years 2013 through 2017 (SOR ¶ 1.b). After becoming aware of the late filings, Applicant insured that all of the returns were filed. Additionally, he timely filed his 2018 return.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A trustworthiness adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.)

Applicant's financial issues did not arise under circumstances that suggest reckless or irresponsible behavior. By participating in counseling, and sharing in the responsibilities of managing the household finances, Applicant has taken proactive steps to ensure ongoing financial stability and to avoid future financial difficulties. He lives within his means and has not incurred any recent delinquent debt. AG ¶¶ 20(a) through 20(d) and 20(g) apply.

### **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).

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his past financial issues. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge