



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00305  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

09/10/2019

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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 (SCA) on October 26, 2017. On February 15, 2019, 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on June 28, 2019. Applicant received the FORM on July 8, 2019. The Government's evidence, included in the FORM and identified as Items 1

through 5, is admitted without objection. Applicant provided a response to the FORM, which is marked as AX A, with attachments. The case was assigned to me on August 26, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial considerations security concerns.

### **Findings of Fact**

Applicant is a 56-year-old employee of a federal contractor. He reported no military service. He is separated and in the process of divorcing his wife. He has two adult children and one adult stepchild. Applicant has not held a security clearance and is sponsored by the defense contractor with whom he has been employed since April 2017. (Item 3) He disclosed his financial issues on his security clearance application.

### **Financial**

The SOR alleges in 1.a-1.t that Applicant failed to file, as required, Federal income tax returns for tax years 2015 and 2016, and state income tax returns for tax years 2015 and 2016. (Items 2-5) The SOR also alleges delinquent debts in the amount of approximately \$38,900. Applicant admitted the allegations listed in the SOR, with the exception of allegations 1.h, 1.l, and 1.o totaling approximately \$4,877. (Item 2)

Applicant provided various reasons for not filing his income tax returns, to include, that he had no ability to pay and had a low income in 2016. (Item 2) He noted that he would be filing the 2015 and 2016 taxes pending divorce requirements. He blamed underemployment and unemployment for the accumulation of delinquent debts. In addition, as an only child, Applicant cared for his ill mother who died in July 2017. (Item 2)

On Applicant's 2017 SCA, he stated that could not file his taxes due to unemployment. He noted that he had delinquent debts. (Item 3) In his answer, Applicant stated that his general approach to "financial recovery" was to see what property distribution income he would have pending the outcome of his divorce. He also pension fund money of about \$38,000 that he would use when the divorce is final. However, he also noted that the attorney fees in the amount of \$3,000 to \$5,000 prevent him from resolving his debts on his credit report. (Item 2) He has not set up any payment plans for his unresolved debts. He explained that he is paying back money to friends who have helped support him financially over the years.

Applicant responded to the FORM and provided updated information, dated June 2019, regarding a court stipulation concerning ancillary matters concerning a divorce. He also provided correspondence from his divorce attorney concerning various unresolved matters in the divorce proceeding. He finally stated that he believes his wife executed two mortgages fraudulently in his name and perhaps credit debts as well. Applicant stated that in about six to eight months he would be in a position to know what his true debts are. He will seek legal counsel about possible fraud. He believes that after the divorce

settlement he will have money to address his delinquent debts and that the amount of debt should be much smaller. (AX A, with attachments)

Applicant submitted information concerning his pension benefits, income for 2017, and a 2018 performance evaluation that reflects his work exceeds standards. (Item 2) There is no information in the record concerning financial counseling, or use of a budget.

### **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 and other documentation in the record reflect non-filing of Federal and state income tax returns for years 2015 and 2016. Three disqualifying conditions under this guideline are established: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG 19(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").

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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant provided various reasons for not filing his 2015 and 2016 Federal and state income tax returns. He admitted that his delinquent debts were the result of unemployment, underemployment, separation and divorce, and the illness of his mother who died in July 2017. Since he is uncertain of his financial situation pending the outcome of the final divorce, he has not resolved any of the alleged debts. Applicant's debts resulted from some circumstances beyond his control, but he has not resolved any of his financial issues and is currently unsure what he will be able to afford and when that might be. He surmised that in six to eight months he would be in a better position. Applicant did not articulate a good-faith reason as to why he has been unable to file his outstanding tax returns. He did not report any financial counseling. He provided no evidence of any payments or a specific plan for repayment of his delinquent debts. He has been with his current employer since 2017. In response to the FORM, Applicant submitted correspondence from his attorney and a court stipulation regarding ancillary matters concerning the divorce settlement. He also alluded to possible fraud on the part of his wife when she fraudulently opened mortgages and credit obligations in his name. On his 2017 SCA, he noted the failure to file and his debts. Applicant has not furnished documentary evidence that he has addressed any of the financial concerns. He has not met his burden of proof. None of the mitigating conditions 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):

- (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 never held a security clearance. He has worked for a number of years as a contractor, but he was unemployed in 2016. Applicant is separated and in the process of divorcing his wife. He admitted that he has no specific plan at this point in time to resolve his financial issues due to the unknown outcome of the final divorce. He responded to the FORM and admitted that he did not file his Federal or state income tax returns for the years in question. He has been employed since 2017. Applicant noted that he has large attorney fees to pay and cannot pay his debts. He repeatedly failed to fulfill his legal obligations, as required by law. I find that he has not demonstrated good judgment or reliability.

The record does not provide sufficient information to mitigate the security concerns in this case. Applicant provided various reasons for incurring the delinquent debts, but he has not acted reasonably in this case. He gave no real reason for not filing the tax returns. Applicant has not has mitigated the 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**

Subparagraphs 1.a-1.t

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