



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 19-00642  
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 Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

03/24/2020

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**Decision**

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FOREMAN, LeRoy F., 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 September 20, 2017. On July 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on November 25, 2019, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on December 19, 2019. On January 15, 2020, a complete

copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 20, 2020, and submitted a letter and documentation of a state tax payment agreement, which were admitted in evidence as Applicant's Exhibits (AX) A and B. The case was assigned to me on February 21, 2020.

In Applicant's response to the FORM, he asked for an additional 30 days to provide documentation of "some progress" toward resolving his tax problems. I notified him by email on March 4, 2020, that I would hold the record open until Friday, March 20, 2020, to enable him to submit additional documentary evidence. He timely submitted AX C, D, and E, which were admitted without objection.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c and 1.e-1.i. He denied the allegation in SOR ¶ 1.d. His admissions are incorporated in my findings of fact. In the FORM, Department Counsel amended SOR ¶ 1.i and added SOR ¶¶ 1.m-1.o. Although the Government's submission requested that Applicant admit or deny the amendments to the SOR, he did not. I have treated Applicant's failure to respond to the amendment of SOR ¶ 1.i and the addition of SOR ¶¶ 1.m-1.o as denials.

Applicant is a 49-year-old audio-visual technician employed by a defense contractor since September 2015. He obtained a master's degree from a U.S. university in June 2007. He worked for a non-government telecommunications company from May 1998 to May 2015, took an early retirement, and was unemployed from May to September 2015. He has never held a security clearance.

Applicant married in July 1995, divorced in July 1997, and married again in August 1997. He has two children, ages 20 and 13.

The SOR as amended alleges 15 delinquent debts totaling about \$286,943. They include delinquent federal and state taxes, two delinquent mortgage loans, and two delinquent consumer debts. The evidence concerning his delinquent debts is summarized below.

**SOR ¶ 1.a: state tax lien entered in 2016 for \$4,037.** In Applicant's answer to the SOR, he stated that he has an installment agreement and is paying \$64 per month. In his response to the FORM, he submitted documentation of his payment agreement, showing that he had made two \$64 payments, with 58 payments remaining, as of December 2019. (AX B.) The document does not reflect when he and the state tax authority reached an agreement, but the timing of the payments indicates that it was not until late 2019.

**SOR ¶ 1.b: federal tax lien entered in 2015 for \$18,437.** This tax lien was filed for the taxes due for tax year 2011. It has not been satisfied. (Item 7 at 2.)

**SOR ¶ 1.c: federal tax lien entered in 2011 for \$38,776.** This tax lien was filed for the taxes due for tax years 2007 through 2010. (Item 7 at 3.) It has not been satisfied.

**SOR ¶ 1.d: delinquent mortgage loan charged off for \$57,322.** In Applicant's answer to the SOR, he stated that this debt was charged off and that he had included the amount in income, suggesting that the debt was forgiven. However he provided no documentation to support his explanation.

**SOR ¶¶ 1.e and 1.f: consumer debt placed for collection of \$3,732 and credit-card account placed for collection of \$3,724.** In Applicant's answer to the SOR, he claimed that these debts are duplicates. Both were referred to the same collection agency, but the original creditors are different and the account numbers are different. (Item 9 at 7.) In his answer to the SOR, Applicant attributed the debts in SOR ¶¶ 1.e and 1.f to credit-card fraud, but he provided no documentary evidence to support his explanation. They are not resolved.

**SOR ¶ 1.g: delinquent mortgage loan past due for \$99,464; in foreclosure with balance of \$489,290.** The judgment of foreclosure reflects that Applicant owed the lender \$484,014 when the judgment was entered in June 2019. (Item 11 at 1.) The property was sold back to the lender for \$320,200 in July 2019. (Item 11 at 8.) There is no evidence that the deficiency has been forgiven or otherwise resolved.

**SOR ¶ 1.h: delinquent federal taxes of \$12,698 for tax year 2010.** These delinquent taxes were part of the basis for the tax lien alleged in SOR ¶ 1.c. They are not resolved.

**SOR ¶ 1.i: delinquent federal taxes of \$25,175 for tax year 2011.** This debt was the basis for the tax lien alleged in SOR ¶ 1.b. They are not resolved.

**SOR ¶¶ 1.j and k: delinquent federal taxes of \$18,662 for tax year 2014 and \$33,791 for tax year 2015.** In Applicant's answer to the SOR and his response to the FORM, he stated that he has paid a tax professional \$16,000 to consolidate his tax debt and submit an offer in compromise to the IRS. He submitted no evidence that the tax professional has yet accomplished any of these tasks. After the hearing, Applicant submitted AX C and D, which are federal income tax returns completed by a professional tax preparer for tax years 2017 and 2018, showing that Applicant owes \$4,454 for 2017 and \$5,852 for 2018. He also submitted a cover email explaining that he needed to file these returns to complete his offer in compromise. (AX E.) There is no evidence that the forms were sent or received by the IRS and no evidence of payments.

**SOR ¶ 1.l (amended in FORM): failure to timely file federal income tax return for tax years 2016 and 2017.** As of June 2019, these returns had not been filed. (Item 6 at 11-12.) In Applicant's answer to the SOR, he stated that his tax professional would file the returns. There is no evidence that the 2016 return has been prepared or

filed. Applicant submitted evidence that a federal income tax return for 2017 had been prepared, but no evidence that it had been filed. (AX C.)

**SOR ¶¶ 1.m-1.o (amended in FORM): delinquent federal taxes of \$10,051 for tax year 2007; \$1,661 for tax year 2008; and \$16,624 for tax year 2009.** The tax lien alleged in SOR ¶ 1.c was based on these delinquent taxes as well as the delinquent taxes for tax year 2010. Applicant did not respond to these allegations in his answer to the SOR or response to the FORM. They are reflected in FORM Item 5 at 23.

When Applicant was interviewed by a security investigator in March 2018, he attributed his financial problems to the results of an IRS audit of his returns around 2007 through 2012 that disallowed many of the deductions he had taken and to being heavily taxed on his early withdrawal of funds from his retirement account. (Item 5 at 13.) In his answer to the SOR, he attributed his financial problems to leaving a higher-paying job to be closer to his family and the expenses of caring for his mother-in-law, who lives with him and is in remission from cancer, and caring for his mother, who has required extensive medical care. He provided no documentation of the medical and related costs of caring for his mother-in-law and mother.

### **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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . . Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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).

The tax liens alleged in SOR ¶¶ 1.b and 1.c were filed to enforce the delinquent tax debts alleged in SOR ¶¶ 1.h, 1.i., and 1.m-1.o. The liens duplicate the debts. When the same conduct is alleged twice in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶¶ 1.b and 1.c for Applicant.

Applicant's admissions and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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 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;

AG ¶ 20(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;

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts and past-due tax returns are numerous, recent, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant attributed his tax debts to having deductions disallowed during a tax audit and making an early withdrawal from a retirement account. He attributed his other debts to voluntarily leaving a higher-paying job to be closer to family, and the expenses of caring for his elderly and ill mother and mother-in-law. His tax problems were not caused by conditions beyond his control. His decision to leave his job and withdraw his retirement funds was voluntary. The financial and medical needs of his family members could be a condition beyond his control, but he provided no documentation to support his claim. In any event, he has not acted responsibly toward his federal tax debt. The fact that he did not begin to seriously address his tax problems until he realized that they were an impediment to obtaining a security clearance indicates that he may lack the willingness to follow rules and regulations when his personal interests are not at stake. ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019). It also indicates that he may lack the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(c) is partially established. Applicant has obtained the assistance of a tax professional, but his tax problems are not yet resolved or under control.

AG ¶ 20(d) is established for the state tax debt alleged in SOR ¶ 1.a, but it is not established for any of the federal tax debts or his consumer debts. Applicant presented no evidence of payments, payment agreements, or other resolution of his delinquent federal taxes and consumer debts.

AG ¶ 20(e) is not established. Applicant claimed that the debts alleged in SOR ¶¶ 1.e and 1.f were the result of credit-card fraud, but he submitted no evidence of fraud and no documentary evidence of disputes filed with the original creditor, the collection agency, or the credit bureau.

AG ¶ 20(f) is established for the state tax debt alleged in SOR ¶ 1.a. It is not established for any of the federal tax debts. Applicant has asserted that his tax professionals are working towards an offer in compromise for his federal taxes, but no offer has yet been drafted or submitted. He provided evidence that his federal income

tax returns for 2017 and 2018 have been prepared, but he provided no evidence that they were filed and no evidence of payments or payment agreements.

### **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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant's payment agreement with the state, and the evidence of some action by a tax professional are mitigating factors, but they are insufficient to overcome the security concerns raised by his long history of tax delinquency, dating back to 2007. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 not mitigated the security concerns raised by his federal tax debts, consumer debts, and failure to timely file his federal income tax returns.

### **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.c: For Applicant

Subparagraphs 1.d-1.i: 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.

LeRoy F. Foreman  
Administrative Judge