



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-00671
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2020

Decision

HESS, Stephanie C., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his delinquent tax filings, tax debts, and other financial delinquencies. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on January 2, 2017. On June 7, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines 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 on July 23, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 10, 2019. The case was assigned to me on August 29, 2019. I convened the

hearing as scheduled on September 25, 2019. Government Exhibits (GX) 1 through 4 were admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through J, which were admitted without objection. DOHA received the transcript (Tr.) on October 11, 2019.

Procedural Issues

At the beginning of the hearing, Department Counsel moved to amend the SOR by striking allegation ¶ 1.c as paid and ¶ 1.h as a duplicate of ¶ 1.o.

At the close of Applicant's testimony, Department Counsel moved to amend the SOR by striking tax year 2013 from SOR 1.a. I granted Department Counsel's motions to amend.

The evidence presented during the hearing established that SOR ¶¶ 1.i (\$196) and 1.j (\$216) are the same medical account.

Findings of Fact

Applicant, 36, has been employed in the information technology field (IT) by multiple defense contractors since 2006. He has completed some college coursework and numerous certification programs to remain current with technology. He has a 13-year-old son. He was granted his first security clearance in approximately 2009. (GX 1; Tr. 19-20; GX 2.)

Under Guideline F, the SOR alleges that Applicant: failed to timely file his state and federal tax returns for tax years 2014, 2015, 2017, and 2018 (SOR ¶¶ 1.a and 1.b); is indebted for two student loans totaling \$4,309 totaling (SOR ¶¶ 1.e and 1.g); owes \$312 for two medical debts (SOR ¶¶ 1.i and 1.j); and owes \$16,215 for seven delinquent debts, which include credit-card and utilities accounts, the balance due for a repossessed vehicle, and a personal loan (SOR ¶¶ 1.d, 1.f, and 1.k through 1.o.).

Applicant denies SOR ¶¶ 1.a and 1.b, stating that he has since filed his state and federal tax returns. He denies SOR ¶¶ 1.i, 1.m, and 1.n stating that they are paid. He admits the remaining allegations, stating that he incurred the debts due to financial hardship and that he has contacted the debtors in an effort to establish a repayment plan. The unfiled tax returns are reflected in Applicant's 2017 e-QIP and his May 2019 responses to interrogatories, which include Applicant's certified personal subject interviews (PSI) from 2018. The delinquent debts are reflected in Applicant's May 2019 and February 2018 credit bureau reports (CBR). (GX 4; GX 3.) His admissions are incorporated in my findings of fact.

Applicant experienced financial hardship due to multiple periods of unemployment which include October 2013 to February 2014; October 2016 until December 2016; May 2018 until January 2019; and May 2019 until the present. Since losing his most recent employment, Applicant has been on numerous job interviews, but has been unsuccessful

in securing a position in the IT field. He has been denied several positions because of his lack of experience in certain areas and/or because he does not currently hold a security clearance. (GX 1; Tr. 30-34; AX I; Tr. 65-66.)

From 2006 until 2018, Applicant had custody of his son. As a single parent, Applicant incurred expenses, including for medical care. He did not receive any financial assistance from his son's mother. During Applicant's periods of unemployment, both he and his son were uninsured. (Tr. 53.) His son currently lives with his mother, but Applicant provides financial assistance for them. (Tr. 73.)

Applicant bought a rental property in 2011. The house needed significant restoration. He experienced difficulties in the restoration due to unreliable contractors, and the process required a significant financial investment. He did not rent the property until sometime in 2016 or 2017. (Tr. 60.) Applicant acquired a second rental property from a family member. He used his money to fix it up, and has used the rental income to pay the family member for the balance owed for the property. He owns both properties free and clear. He began renting the second property in February 2019. The tenants in both rental properties have a history of paying their rent late. However, both properties were rented and paid on time beginning in September 2019 for a total of \$1,900. This is currently Applicant's sole source of income. He and his son do not currently have health insurance. (Tr. 59-60; Tr. 69.)

Applicant did not timely file his 2014 through 2018 federal and state tax returns (SOR ¶¶ 1.a and 1.b). He testified that he was focused on caring for his son and trying to make ends meet and simply did not file his taxes. During his 2018 PSI, he stated that he did not file his 2016 and 2017 tax returns because he knew that he owed money and could not afford to pay. (Tr. 23; GX 2.)

In April 2019, Applicant hired a tax preparer to prepare and file his returns. She filed them in April 2019, but for unknown reasons, the Federal returns were not accepted by the IRS. Applicant refiled them and as of the date of the hearing, his 2014 through 2016 and 2018 had been accepted by the IRS. Applicant's W-2 for 2017 was inaccurate, and the return for that year was rejected by the IRS. Applicant received a corrected W-2 from his employer, and resubmitted the 2017 electronically resubmitted the day before the hearing. Applicant owes between \$7,000 and \$8,000 for delinquent Federal taxes and approximately \$2,500 for his 2016-2018 state taxes. It is unclear what his state tax obligations were for 2014 and 2015. (GX 2; Tr. 70.) He has not made any effort to contact the IRS or the state treasury to arrange a repayment plans. (Tr. 23-29.)

The \$10,569 debt alleged in SOR ¶ 1.d is the balance due for repossessed vehicle. Applicant bought a vehicle for \$32,000 in December 2011. He fell behind on his payments in November 2013 while unemployed, and the vehicle was repossessed in February 2014. Applicant immediately contacted the creditor and offered to make a \$6,000 payment, but the creditor demanded payment in full of the outstanding balance. Applicant recently contacted the creditor in an effort to negotiate a repayment plan, but the creditor

demanded \$400 upfront and \$400 a month. Applicant was financially unable to commit to such an agreement. (Tr. 36-38.) This debt remains unresolved.

Applicant has two delinquent student loan accounts of \$3,941 and \$368 (SOR ¶¶ 1.e and 1.g) that were opened in 2005. He made payments in 2008, then had periods of deferment and forbearance. The accounts became delinquent in 2015. Applicant contacted the creditor and entered a repayment agreement on September 16, 2019, for \$85 a month for repayment of both accounts. He has made one payment. (AX C; Tr. 38-39.)

On September 24, 2019, Applicant entered repayment agreements to pay \$50 a month on each of the following accounts: the \$2,230 personal-loan account (SOR ¶ 1.f); the \$216 medial account (SOR ¶ 1.i and 1.j are duplicates); the \$172 utility account (SOR ¶ 1.k); and the \$1,400 credit-card account (SOR ¶ 1.o). He also made his first payment on each account on that day.

Applicant paid the \$362 cable bill and the \$482 and \$1,000 rent balances (SOR ¶¶ 1.l, 1.m, and 1.n) in 2016. (AX H.) These debts are satisfied.

Applicant has made lifestyle adjustments in an effort to gain financial stability and not incur any more debt. He liquidated his 401(k), he lives with his parents, and he does not own a vehicle. He attempted to sell one of his rental properties, but was unable to do so. He also attempted to take a loan using one of his rental properties as collateral, but was unable to do so because he did not have a job. He experienced additional financial strain when a tree fell and damaged one of his rental properties, and although he had insurance, he was still required to pay some of the repair costs out-of-pocket. He has been caught in a vicious cycle of financial strain due to unemployment. Applicant has continued to gain certifications in the IT field to increase his hireability. It is his intention to repay all his delinquent accounts including his tax debts, which he thinks he could afford \$75 to \$100 per month in payments. He has approximately \$500 in his checking account. (Tr. 57-64; Tr. 28; AX J; Tr. 71.) He was credible and sincere during his testimony.

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 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.

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(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; and

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

Applicant has experienced multiple, sustained periods of unemployment, during which he was a single parent. While unemployed, Applicant became delinquent on his financial obligations. He also did not have health insurance for himself or his son, and incurred some medical debt. He failed to timely file his Federal and state tax returns, due in large measure to the fact that he was financially unable to pay his taxes. These periods

of unemployment, and the resultant financial difficulties, were largely beyond Applicant's control.

Applicant has recently filed his Federal and state returns, but has not contacted the IRS or state treasury to set up payment plans. The day before the hearing, Applicant contacted a number of SOR creditors and entered repayment plans and made the first payments on the accounts. He paid three of the SOR debts in 2016. Applicant has made lifestyle changes to prevent further indebtedness.

However, Applicant remains in the tenuous financial situation. He currently has both his rental properties rented for \$1,900, but the tenants have been unreliable in the past and there is no guarantee that this rental income is sustainable. While he owns both active properties out right, he was unable to sell one of the properties and has been unable to borrow against either. He experienced out-of-pocket expenses when a tree fell and damaged one of the houses. He does not have the financial resources to weather unanticipated expenses. Additionally, he does not have any immediate employment opportunities.

While Applicant's contact with his creditors and his entering into repayment plans are representative of the good-faith effort to resolve his delinquent accounts, at the time of the hearing, he had only made one payment on each account. This is simply not enough to establish a track record of repayment. Additionally, Applicant has not entered any type of repayment agreements with the IRS or the state treasury. He has been unable to negotiate a repayment plan for the balance due on his repossessed vehicle. Despite the applicability of AG ¶ 20(b), Applicant has not mitigated the security concerns raised by his failure to timely file his tax returns, delinquent accounts, and overall financial instability.

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 in light of 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, but I have also considered the following:

Applicant was first granted a security clearance in 2009. His efforts to continue to improve his knowledge of the IT field by gaining certifications is commendable. He has taken proactive measures to increase his financial stability, and not incur additional debt. He was credible and sincere during his testimony.

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 failure to file and pay his taxes as required and to resolve his other delinquent debts. Accordingly, I conclude he has not 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): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.b and 1.d: **Against Applicant**

Subparagraphs 1.e – 1.g and 1.i – 1.o: **For Applicant**

Subparagraphs 1.c and 1.h: **Withdrawn**

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge