



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



In the matter of:)
)
-----) ISCR Case No. 19-00829
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

09/08/2020

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. Applicant did not present sufficient evidence to explain, extenuate, or mitigate his long-standing history of financial problems. For 13 tax years covering 2006-2018: (1) Applicant failed to timely file a tax return for 11 of the 13 tax years; (2) returns have now been filed for 7 of the 13 tax years; and (3) he owes approximately \$29,000 in back taxes for tax years 2006-2008 for which he has yet to make a payment arrangement with the IRS. In addition, he has unresolved child-support arrearages, a delinquent student loan, and six collection accounts. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on September 27, 2017. (Exhibit 1) This document is commonly known as a security clearance application. He was interviewed as part of a background investigation in November 2017. (Exhibit 2) He replied to written interrogatories in May 2019. (Exhibit

2). Thereafter, on June 26, 2019, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on July 23, 2019. In a two-page memorandum, he admitted the SOR allegations except for the matters in SOR ¶¶ 1.e and 1.i, which he denied. He also provided brief explanations. And he requested a hearing before an administrative judge.

The case was assigned to me on September 3, 2019. The hearing took place as scheduled on December 2, 2019. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-11. Applicant offered documentary exhibits, which were admitted as Exhibits A-C. Applicant and his spouse provided witness testimony. The hearing transcript (Tr.) was received on December 11, 2019.

The record was kept open until January 3, 2020, to provide Applicant an opportunity to present additional documentation. (Tr. 86-89) Those matters were timely received and they (along with the accompanying e-mails) are admitted without objections as Exhibits D-O.

Findings of Fact

Applicant is a 45-year-old employee who is seeking to obtain a security clearance. (Tr. 5-6) He is employed as a senior systems engineer for a large company in the defense industry. He began working for this company in October 2018. (Tr. 36) He referred to it as his “career job” and “dream job.” (Tr. 77) His gross annual salary is about \$100,000 (\$8,346 monthly) as of December 2019. (Exhibit E) He has a reputation as a good employee per letters of recommendation from two co-workers. (Exhibits B and C) His educational background includes a bachelor’s degree in engineering physics and a master’s degree in organizational leadership. He married in 2007 and divorced in 2015. He married his current spouse in 2018. He has two adult children, daughters, ages 22 and 21, born from other relationships.

The SOR concerns a history of financial problems or difficulties. It includes unresolved federal income-tax matters, child-support arrearages, a delinquent student loan, and delinquent consumer accounts. He attributes his financial problems to hardship caused by irregular employment, to include periods of unemployment and underemployment. (Tr. 33-36) He attributes his income-tax problems to negligence. (Tr. 33) A review of Applicant’s employment history follows below and is based on information he provided in his security clearance application. (Exhibit 1)

Applicant worked as a systems engineer for an aerospace company in State T from February 2004 to October 2010, when he was laid off due to the end of a particular high-profile program. He was then unemployed for a few months before he accepted a job as an analyst for a healthcare company. He worked there from January 2011 to April 2011, when he left to pursue a master's degree in State P. He was unemployed and collected unemployment compensation from April 2011 to October 2011 in State P. He lived with his parents and worked as a graduate assistant during the master's program from October 2011 to June 2013. He completed the necessary course work, but had yet to receive a degree as of September 2017. (Exhibit 1 at 12) His master's thesis was in revision and being reviewed by the university, although he expected to receive the degree in December 2017.

After departing the university, Applicant worked as a part-time retail associate for a couple of months from June 2013 to August 2013, while still living in State P. He left that job to relocate to State T to look for work. He was unemployed from August 2013 to January 2014, when he began working as a full-time teacher for a public school district. He had the teaching job until December 2015, when he returned to State P and moved in with his parents, as he was then undergoing difficult personal circumstances, including a divorce. He was unemployed from December 2015 to October 2016. He worked on his master's thesis during this time. In about October 2016, he returned to State T for a job as a part-time substitute teacher for a staffing company. He had that job in State T until he began his current employment in the defense industry in October 2018, which is located in State A.

a. Federal Income-Tax Matters

In four separate allegations, the SOR concerns two federal tax liens, filed in June 2011 and September 2011, in the amounts of \$22,783 and \$22,806, respectively; failure to timely file, as required, federal income tax returns for tax years 2008-2017; and \$14,536 in back taxes owed to the IRS for tax year 2008. Applicant admitted the four SOR allegations in his written answer. His history of tax problems is long-standing, going back to at least tax year 2006, as shown by the documentary evidence. It also appears the back taxes for 2008 are included in one or both of the federal tax liens, and so the allegation will be decided for Applicant on the basis of the same conduct being alleged twice.

To address the federal income-tax matters, Applicant initially hired an accountant to prepare returns and then retained the services of a tax-relief company in April 2019. (Exhibit A) As Applicant explained, he paid an initial investigation fee of \$495 and pays the company a month fee of \$864, and the matter was pending or under review with the company. (Tr. 38-40) A review of available IRS records—which does not include copies of the tax liens—and credit reports follows below.

The June 2011 federal tax lien for \$22,783 is not reflected in the October 2017 credit report. (Exhibit 8) It is reflected in Applicant's IRS Account Transcripts for tax years 2006-2008, although the dollar amount is not reflected. (Exhibits F, G, and H).

The lien is not reflected in the more recent credit reports from 2018 and 2019. (Exhibits 9, 10, and 11)

The September 2011 federal tax lien for \$22,806 is reflected in the October 2017 credit report. (Exhibit 8) It is not reflected in the credit reports from 2018 and 2019. (Exhibits 8-11) The lien is reflected in the IRS Account Transcripts for tax years 2006-2008, although the dollar amount is not reflected. (Exhibits F, G, and H)

Because copies of the tax liens are not in evidence, it is unknown which tax years the liens apply. It is certainly possible the two federal tax liens are for the same tax years, the second lien filed to reflect an increase in the amount of back taxes owed.

Concerning the failure to file and back taxes, a review of IRS documentation for 13 tax years covering 2006-2018 shows the following: (1) Applicant failed to timely file a tax return for 11 of the 13 tax years; (2) returns have now been filed for 7 of the 13 tax years; and (3) he owes approximately \$29,000 in back taxes for tax years 2006-2008 for which he has yet to make a payment arrangement with the IRS. Details are discussed below. In making the findings below, I have relied on the IRS Account Transcripts because, in my view, they are the best evidence of a taxpayer's status with the IRS.

For tax year 2006, the IRS Account Transcript, dated May 30, 2019, reflects an account balance of \$2,436, which includes \$1,081 in accrued interest and \$54 in accrued penalty. (Exhibit F) The transcript also reflects that an extension of time to file a tax return on October 15, 2007, was made on April 15, 2007; inquiry and notice for non-filing were issued in 2008; a substitute tax return was prepared by the IRS in April 2010; a tax return was secured in November 2010; and a collection notice was issued in 2011 before the filing of the first tax lien.

For tax year 2007, the IRS Account Transcript, dated May 30, 2019, reflects an account balance of \$12,412, which includes \$3,182 in accrued interest and \$499 in accrued penalty. (Exhibit G). The transcript also reflects that an extension of time to file a tax return on October 15, 2008, was made on April 15, 2008; inquiry and notice for non-filing were issued in 2009; a substitute tax return was prepared by the IRS in April 2010; a tax return was secured in November 2010; and a collection notice was issued in 2011 before the filing of the first tax lien.

For tax year 2008, the IRS Account Transcript, dated May 30, 2019, reflects an account balance of \$14,521, which includes \$3,530 in accrued interest and \$895 in accrued penalty. (Exhibit H) The transcript also reflects that an extension of time to file a tax return on October 15, 2009, was made on April 15, 2009; inquiry and notice for non-filing were issued in 2010; a substitute tax return was prepared by the IRS in July 2010; a tax return was secured in March 2011; and a collection notice was issued in 2011 before the filing of the first tax lien.

For tax year 2009, an IRS Account Transcript is not available.

For tax year 2010, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed; inquiry and notice for non-filing were issued in 2011; and a tax return was secured in June 2019.

For tax year 2011, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed.

For tax year 2012, the IRS Account Transcript, dated June 14, 2019, reflects an account of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed and that the IRS issued a letter to Applicant's then employer to limit withholding allowance.

For tax year 2013, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed.

For tax year 2014, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed; inquiry and notice for non-filing were issued in 2016 and 2017; and a tax return was secured in June 2019.

For tax year 2015, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed, although an extension of time to file the return on October 15, 2016, was made on April 15, 2016.

For tax year 2016, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that a tax return was filed on June 10, 2019.

For tax year 2017, the IRS Account Transcript, dated June 14, 2019, reflects an account balance of \$0. (Exhibit 6) The transcript also reflects that no tax return was filed.

For tax year 2018, the most recent tax year, the IRS Record of Account, dated May 30, 2019, reflects Applicant timely filed his federal income return on March 25, 2019. (Exhibit O) A credit of \$1,340 was transferred and applied to tax year 2003. A credit of \$1,715 was transferred and applied to tax year 2006.

At hearing, Applicant claimed his federal income tax returns for tax years 2008-2017 were filed by the tax-relief company. (Tr. 45-49) I informed him I could not accept his representation without documentation, ideally from the IRS, given that the available documentation from the IRS (e.g., Exhibit 6) indicated he had not filed for multiple years. The record was left open for Applicant to provide such documentation.

b. State Tax Lien for \$3,291

The SOR concerns a debt owed to State P based on a tax lien filed in February 2006 for \$3,291. The state tax lien is reflected in a credit report from November 2007. (Exhibit 7) It is not reflected in more recent credit reports from 2017, 2018, and 2019. (Exhibits 8-11) As a result, it was not discussed during his 2017 background investigation. (Exhibit 2) Applicant denied this debt in his answer to the SOR, explaining that he thinks it stems from a job layoff in 1999 when he received unemployment compensation and the state wanted to recoup an overpayment. Applicant had no documentation on the matter.

c. Child-Support Arrearages

The SOR concerns a single allegation that Applicant is indebted for past-due child-support payments to a state child-support office in the amount of \$25,529. Applicant admitted the allegation in his answer to the SOR, explaining it related to one of his daughters who was born to a mother who was receiving public assistance. He explained that he owes arrears for child support for both daughters.

A past-due account for child support for \$5,445 is reflected in a 2007 credit report. (Exhibit 7) Two past-due accounts for child support for \$19,968 and \$11,691 are reflected in the 2017 credit report. (Exhibit 8) A past-due account for child support for \$25,529 is reflected in the 2018 credit report. (Exhibit 9) Two accounts for child support, one past due for \$21,625 and the other current, are reflected in the August 2019 credit report. (Exhibit 10) The current account has a balance of \$4,131. Three accounts for child support, two past due and the other current, are reflected in the credit report from November 2019. (Exhibit 11) The two past-due accounts are for \$21,615 and \$21,625. The current account has a balance of \$2,839.

The creditors are still trying to collect the child-support arrears. Once Applicant started working for his current employer, the creditors notified his employer to withhold money for child-support payments pursuant to wage garnishments. (Exhibit 3) Applicant had no documentation on the child-support arrearages, and the matters are considered unresolved.

d. Delinquent Student Loan Account

The SOR concerns a delinquent student loan account with a past-due balance of \$5,071 with a balance of \$27,628. Applicant explained the student loan was for his undergraduate degree, which he completed in 1998, and he fell behind on payments due to his irregular employment. The past-due loan is reflected as stated in the SOR in the October 2017 credit report. (Exhibit 8) It is not reflected in the 2018 credit report. (Exhibit 9) It is reflected in the credit reports from 2019 with a \$0 account balance, but it also shows that the account was transferred/sold. (Exhibits 10 and 11)

The creditor is still trying to collect the past-due student loan. Once Applicant started working for his current employer, the creditor notified his employer that he was

subject to wage garnishment due to a student loan in the amount of 15% monthly to satisfy a \$57,606 debt. (Exhibit 3) Applicant had no documentation on the student loan, and the matter is considered unresolved.

e. Collection Accounts

The SOR also concerns six collection accounts in amounts ranging from \$203 to \$2,712 for a total of \$6,528. The debts stem from an apartment lease, consumer accounts, and medical collection accounts. Applicant had no documentation for any of the six collection accounts, and the matters are considered unresolved.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.¹ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

² 484 U.S. at 531.

³ 484 U.S. at 531.

⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁶

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

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 or sensitive information. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

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;

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

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15.

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.

The evidence supports a conclusion that Applicant has a history of financial problems that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply here.

Applicant has made very little progress in resolving his extensive list of financial problems. He has taken the first step or two toward addressing his long-standing federal income-tax matters, but retention of the tax-relief company has yet to yield any fruit. Time will tell on that front. The other matters are unresolved. Nevertheless, I am no longer concerned about the state tax lien for \$3,291. Given that the lien dates back to 2006, and that it no longer appears in current credit reports, it is probable that the lien expired or self-released and is no longer on the books. It is mitigated by the passage of time and its non-appearance in recent credit reports.

In addition, I note that an applicant's failure to timely file tax returns and pay tax when due bears close examination and is a matter of serious concern to the federal government. The DOHA Appeal Board has made it clear that an applicant who fails repeatedly to fulfill their legal obligations, such as filing tax returns and paying tax when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017).

Here, I am concerned about the duration of Applicant's federal income-tax problems and the timing of his remedial action. Both are questions of fact that must be addressed. His tax problems date back to 2006 and continued through 2017, a period of more than ten years. His remedial actions date to 2019, when he retained an accountant and then the tax-relief firm to assist him. It's possible that the only reason Applicant is addressing his tax problems is that the matters were brought to the forefront during the security clearance process. He admits he was negligent concerning his federal income-tax obligations, and that is mildly expressed. His negligent disregard of his federal income-tax obligations demonstrates unreliability, untrustworthiness, and lack of good judgment. It is a disqualifying characteristic for those who seek eligibility for access to classified information.

In mitigation, Applicant disclosed his federal income-tax problems in his security clearance application. He also provided additional information during the security clearance process. I also considered his periods of unemployment and underemployment during 2010-2019, the multiple relocations, and the divorce in 2015. Those life events often create difficult and challenging circumstances. Concerning his employment history, I note that he went many years between good-paying jobs, from the layoff in October 2010 until he began his current job in October 2018. Obviously, those circumstances hindered his ability to repay past-due accounts. But I also note that Applicant's back taxes were incurred for tax years 2006-2008 before the job layoff in 2010. In other words, this is a long-standing problem for Applicant.

Applicant is now in the beginning stages of addressing the tax matters while the other matters remain unresolved. In that respect, he has not acted responsibly under the circumstances. He owes a sizeable sum in back taxes to the IRS, at least \$29,000 for tax years 2006-2008 per IRS Account Transcripts; he owes more than \$50,000 on a delinquent student loan; and he owes at least \$20,000 (if not more than \$40,000) in child-support arrears. That level of indebtedness suggests he is financially overextended now and for the foreseeable future. Considering the totality of facts and circumstances, Applicant has not presented sufficient evidence of reform and rehabilitation. Accordingly, none of the mitigating conditions noted above apply in Applicant's favor.

Following *Egan* and the clearly consistent standard, I have doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a -- 1.c:	Against Applicant
Subparagraphs 1.d and 1.e:	For Applicant
Subparagraphs 1.f -- 1.m:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility denied.

Michael H. Leonard
Administrative Judge