



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 19-02378  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*  
08/25/2020

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**Decision**

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted security clearance applications on October 19, 2015 (SCA1) and March 30, 2018 (SCA2). On December 18, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order (EO) 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 the DOD on June 8, 2017.

Applicant answered the SOR on January 31, 2020, and requested a decision on the written record without a hearing. On April 30, 2020, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 8. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on May 6, 2020, and

did not respond. Items 1 through 3 are the pleadings in the case. Items 4 through 8 are admitted into evidence. The case was assigned to me on July 6, 2020.

### **Findings of Fact**

Applicant, age 60, is married with one adult child. He earned a bachelor's degree in 1982 and a master's degree in 1988. He has held a DOD security clearance since 1983. He has been employed full time as an engineer by a defense contractor since 2001, and part time as a lecturer by a state university since 2013. (SCA1, SCA2)

Applicant accumulated significant debts due to his and his wife's excessive spending which led them to file for Chapter 13 bankruptcy in November 2012. Their reported liabilities totaled \$481,890, including a \$346,217 home-mortgage account, a \$7,000 tax debt, and unsecured debts totaling \$125,526. They paid \$170,174 during a period of 59 months pursuant to the Chapter 13 repayment plan. The bankruptcy was discharged in January 2018. (Item 7 at 10; Item 8)

Applicant failed to file, as required, his federal and state income tax returns for tax years 2012 through 2018 for reasons he did not specify in the record. Those returns remain unfiled. The \$7,000 tax debt reported during his bankruptcy related to state income taxes for tax years 2013 through 2016, which he repaid in 2018. As of January 2019, he owed \$80,000 in federal income taxes for tax years 2013 through 2017. He attributed his delinquent taxes to excessive spending during those tax years. In January 2019, he anticipated setting up a repayment plan to resolve his federal tax debts. In August 2019, he anticipated making a \$500 payment to the IRS in September 2019. In his January 2020 SOR answer, in an apparent reference to his federal tax debts, he stated that he "payed some liens" and was "paying increased taxes" toward "eventual compliance." He did not provide any documents corroborating agreements or payments to resolve his federal tax debts. Since his delinquent federal taxes were not alleged in the SOR, they will be considered only in the context of evaluating the whole person concept and mitigation. (Item 3; Item 7 at 10-11, 16-17)

Between approximately 2000 and 2017, Applicant misused his company-issued credit card by paying for personal expenses related to the long-distance commute between his home and work, including gas, meals, and hotels. During the period when he misused the credit card, he was aware of his company's policy that it could only be used for authorized work-related expenses. He was not confronted about his misuse until February 2017, at which time the policy was reiterated to him and he was required to complete follow-up training related to proper use of the credit card. His employer estimated that Applicant charged personal expenses to his company-issued credit card totaling \$109,514 between February 2008 and February 2017. Applicant estimated that the total personal expenses he charged was approximately \$1,000,000 between 2000 and 2016. (Item 5 at 13, 39-40; Item 6; Item 7 at 11)

Applicant answered "no" to each question on SCA1 about his financial record, including whether, in the last seven years, he had filed a petition for bankruptcy or failed to file his federal or state tax returns or pay his federal or state taxes. He affirmed those

“no” responses in October 2015 by certifying that “my statements on this form . . . are true, complete, and correct to the best of my knowledge and belief and are made in good faith.” (Item 4 at 34-35)

On SCA2, Applicant reported his Chapter 13 bankruptcy filing, his failure to file his federal tax return and pay approximately \$7,000 in federal taxes for tax year 2012, and his credit-card misuse. He affirmed those responses in March 2018 by certifying that “my statements on this form . . . are true, complete, and correct to the best of my knowledge and belief and are made in good faith.” (Item 5 at 38-39, 40-41)

Applicant was interviewed in January 2019 in connection with his security-clearance investigation to discuss, among other things, the contents of SCA2. He was forthcoming about the facts and circumstances surrounding his derogatory financial history, including facts that were not disclosed on SCA1 or SCA2. He claimed that he did not report his failure to file state tax returns and pay state taxes for tax years 2012 through 2016 on SCA2 due to oversight. He did not address why he had not disclosed his failure to file federal tax returns for tax years 2013 through 2016 on SCA2. He also claimed that he listed owing \$7,000 in federal taxes on SCA2 because he believed that was the total amount that he owed at the time, and only later learned that the \$7,000 amount related to his state taxes and that he actually owed \$80,000 in federal taxes. (Item 7 at 10-11)

In January 2019, Applicant asserted that his overall financial status had improved after he completed the Chapter 13 bankruptcy process. He acknowledged that he remained in arrears with his tax payments, but was timely meeting his other financial obligations and had eliminated the use of credit cards. He reported a monthly net remainder of about \$2,000, taking into consideration his and his wife’s income and expenses, which included amounts he anticipated spending to repay his taxes. In January 2020, Applicant argued that the successful discharge of his Chapter 13 bankruptcy demonstrated his ability to manage his finances. He and his wife both completed a financial management course in connection with their Chapter 13 bankruptcy. (Item 3; Item 7 at 9-10; Item 8 at 8-9)

In his SOR answer, Applicant admitted each of the Guideline F and Guideline E allegations. He admitted that he deliberately failed to disclose his Chapter 13 bankruptcy and his failure to file federal and state income tax returns for tax years 2012 through 2014 on SCA1. He also admitted that he deliberately failed to disclose his failure to file federal and state income tax returns for tax years 2013 through 2016 on SCA2. His failure to disclose his unfiled 2012 state income tax return on SCA2 was not alleged in the SOR. While he accepted responsibility for his “reporting failures,” he argued that his exemplary work record of 20 years and record of complying with program security guidelines for protecting information should be taken into consideration. The facts surrounding the deliberate falsifications alleged in the SOR of SCA1 included tax year 2015 (SOR ¶ 1.c) and of SCA2 included tax year 2017 (SOR ¶ 1.d). Given the dates that the respective SCAs were certified, tax years 2015 and 2017 would not have been reportable. Thus, I have not considered those dates in the respective SOR allegations and answers. (Item 3)

## 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.” (*Egan* 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.” (EO 10865 § 2))

Eligibility for a security clearance is predicated upon the applicant 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.” (EO 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. (*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. 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. (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; 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. 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 the written record establish the following disqualifying conditions: AG ¶ 19(c) (a history of not meeting financial obligations); AG ¶ 19(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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).

None of the following potentially applicable mitigating conditions under this guideline are established:

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(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(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.

Bankruptcy is an acceptable form of debt resolution. Thus, the concern is not with Applicant's Chapter 13 bankruptcy itself, but with the underlying history of financial indebtedness and irresponsibility surrounding it that continue to persist. Accordingly, while I find SOR ¶ 1.b in Applicant's favor, the facts alleged therein remain relevant to my analysis of the ongoing concern surrounding his failure to timely file state and federal tax returns and pay federal taxes. While Applicant is credited with successfully resolving significant delinquent debts through bankruptcy and with repaying his delinquent state tax debt, he did not meet his burden to establish mitigation under Guideline F.

Because Applicant's claims were unsubstantiated by corroborating documentary evidence, I cannot conclude that he has established any payment plans or made any payments to resolve his delinquent federal taxes. His persistent delay in filing his tax returns without any justifiable excuse does not demonstrate responsible action and calls into question his suitability for access to classified information. A person who fails repeatedly to fulfill his or her legal obligations, such as filing income tax returns 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. 14-01894 at 5 (App. Bd. Aug. 18, 2015)). "Failure to file income tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." (ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). I am left with doubts about Applicant's current reliability, trustworthiness, and judgment. Thus, I cannot conclude that he has mitigated the Guideline F concerns.

### **Guideline E: Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security

clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant's deliberate falsifications of SCA1 and SCA2 establish the general concerns involving questionable judgment and unwillingness to comply with rules and regulations and the following specific disqualifying condition under this guideline:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's misuse of his company-issued credit card establishes the general concerns involving questionable judgment and unwillingness to comply with rules and regulations, and the following specific disqualifying conditions under this guideline:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources; and

AG ¶ 16(f): violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

Neither of the following potentially relevant mitigating conditions under this guideline are established:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

An applicant's completion of a security questionnaire is the initial step in requesting a security clearance and the investigative process is contingent upon the honesty of the applicant. The Appeal Board has explained that beginning with an applicant's responses in the application,

The security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The Federal Government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions (based on complete and accurate information) about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. (ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002))

Applicant's failure to disclose his known derogatory financial history on SCA1 was security significant on its own. His subsequent deliberate lack of full candor on SCA2 with respect to his extended non-compliance with tax return filing requirements further called his reliability into question. Taken together with his credit-card misuse, his deliberate SCA falsifications demonstrate a willingness to place his own self-interest above his legal obligations. He is credited with disclosing at least some of his negative financial history on SCA2 which placed the Government on sufficient notice to investigate further. Moreover, the fact that Applicant was forthcoming about the true extent of his financial history during his security clearance interview reflects favorably upon him. However, Applicant's deliberate SCA falsifications, not once but twice, and his credit-card misuse establish a pattern of questionable behavior that I am unable to conclude is not likely to recur. I have doubts about Applicant's current reliability, trustworthiness, and judgment. Thus, I cannot conclude that he has mitigated the Guideline E concerns.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole



person. 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 Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his failure to timely file federal income tax returns and his personal conduct. Accordingly, Applicant 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**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a – 2.d: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge