



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02794  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro Se*  
11/30/2020

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his history of gambling and failure to timely file his state and federal income tax returns and pay his delinquent federal taxes. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application on August 22, 2018. On November 8, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. The 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 December 6, 2019, and requested a decision on the written record without a hearing. On February 18, 2020, the Government sent Applicant a complete copy of its written case, a File of Relevant Material (FORM), including pleadings and evidentiary documents identified as Items 1 through 8. He

received the FORM on February 27, 2020. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant requested and received continuances with the following extended deadlines: April 11, 2020; May 14, 2020; June 19, 2020; August 6, 2020; August 30, 2020; and September 11, 2020. Applicant's documents were received by DOHA on September 17, 2020. The case was assigned to me on September 27, 2020. I marked Applicant's document as Applicant Exhibit (AE) A, pages 1 through 63. Items 1 through 8 and AE A are admitted into evidence without objection.

### **Findings of Fact**

Applicant is 68 years old. He has been divorced since 1995, and he and his ex-wife have three adult sons. He obtained a bachelor's degree in 1981. He has worked as a senior analyst for defense contractors since 1995, and he has worked for his current employer since February 2009. He enlisted in the Air Force in 1971 and received an honorable discharge in 1983, when he was commissioned as an officer. He retired honorably in 1994. He has held a security clearance since at least 2008, and he held a top secret clearance when he served in the Air Force. (Item 4; Item 5; Item 6)

Applicant admitted that he failed to timely file, as required, his 2018 federal income tax return. He denied that he failed to timely file, as required, his 2014 through 2017 state income tax returns, but admitted to failing to file his 2018 state income tax returns in a timely manner. He admitted to owing the Internal Revenue Service (IRS) \$9,910.45 for tax years 2011, 2013, 2015, and 2016, but claimed he entered into a repayment agreement with the Internal Revenue Service (IRS) in January 2018. In his December 2019 answer to the SOR, Applicant claimed he was paying \$1,000 monthly, but he did not include proof of any payments. Finally, he admitted to gambling losses of \$65,000, which caused him to fall behind on his mortgage and other financial obligations, but claimed he had stopped gambling. (Item 1; Item 3)

In his August 2018 security clearance application (SCA), Applicant disclosed that he failed to pay his federal income taxes for tax years 2011, 2013, 2015, 2016, and 2017. He also disclosed that he was almost \$20,000 delinquent on his mortgage. He fell behind on his mortgage and tax obligations due to gambling losses and helping family members with their finances. He averaged his gambling losses to be \$10,000 a year for an unstated number of years. Applicant claimed he was working with the IRS to establish a repayment agreement, and he was working with his mortgage holder to reach a loan modification agreement. Because Applicant's delinquent mortgage debt was not included in the SOR as a separate allegation, I will consider it only in relation to his gambling losses and to evaluate mitigation and the whole person concept. (Item 4 at 32-28)

During his December 2018 and January 2019 personal subject interviews (SI), Applicant told the government investigator information consistent with his SCA disclosures. He gambled to try and increase his funds, and his gambling caused financial issues between January 2012 and August 2018. He needed additional funds because of the financial help he provided to his family. He told the Government investigator that there

is no chance he would gamble in the future due to the problems gambling had caused him. He provided the Government investigator copies of February 2016 and November 2018 loan modification agreements for his primary mortgage. (Item 6)

In his July 2019 response to CAF interrogatories, Applicant included Internal Revenue Service (IRS) tax transcripts for tax years 2011 through 2017 and state transcripts for tax years 2011 through 2013. The state transcripts did not indicate when he filed the relevant returns, but Applicant asserted that his state income tax returns were filed every year with his federal income tax returns. He also claimed he was working with the IRS to establish a repayment agreement, but he did not provide proof of a current repayment agreement, past repayment agreements, nor proof of any payments to any of the agreements. Between 2011 and 2019, Applicant's adjusted gross income was between \$141,330 and \$174,673. (Item 5, AE A)

Applicant filed his 2011 federal income tax return on July 16, 2012. The June 2019 IRS transcript reflects no evidence that he filed for an extension, nor did he pay the outstanding taxes that were due at that time. Additionally, the transcript shows that he entered into installment agreements in March 2014, September 2014, March 2017, and January 2018, but no payments were made. In his response to the FORM, Applicant provided an August 2020 tax transcript, reflecting an outstanding balance of \$.03. His payments totaling \$1,343.79 were made between April and July 2020. (Item 5 at 9-11; AE A at 4-5, 37)

Applicant filed his 2012 federal income tax return on May 13, 2013, and his tax transcript reflects no evidence that he filed for an extension. He overpaid his taxes, and the residue of \$654 was applied to tax year 2007. (Item 5 at 12-13)

Applicant filed his 2013 federal income tax return on June 2, 2014. The June 2019 IRS transcript reflects no evidence that he filed for an extension, nor did he pay the outstanding taxes that were due at that time. Additionally, the transcript shows that he entered into installment agreements in September 2014, March 2017, and January 2018, but no payments were made. In his response to the FORM, Applicant provided an August 2020 tax transcript, reflecting an outstanding balance of \$87.06. His payments totaling \$2,481.80 were made between June and August 2020. (Item 5 at 14-16; AE A at 7-8, 37)

Applicant filed his 2014 federal income tax return on August 3, 2015, and his tax transcript reflects no evidence that he filed for an extension. He overpaid his taxes, and the residue of \$90 was applied to tax year 2002. (Item 5 at 17-19; AE A at 9-15)

Applicant filed his 2015 federal income tax return on February 27, 2017. The June 2019 IRS transcript reflects no evidence that he filed for an extension, nor did he pay the outstanding taxes that were due at that time. Additionally, the transcript shows that he entered into installment agreements in March 2017 and January 2018, but no payments were made. In his response to the FORM, Applicant was unable to provide an updated tax transcript, nor did he provide evidence of payments toward the outstanding balance of \$2,776.95. (Item 5 at 20-22; AE at 16-22)

Applicant filed his 2016 federal income tax return on July 2, 2018. The June 2019 IRS transcript reflects no evidence that he filed for an extension, nor did he pay the outstanding taxes that were due at that time. Additionally, the transcript shows that he entered into an installment agreement in June 2018, but made no payments. In his response to the FORM, Applicant provided an August 2020 tax transcript, reflecting an outstanding balance of \$3,653.91. He entered into an additional installment agreement in November 2019, but did not provide proof of payments. (Item 5 at 23-24; AE at 23-24)

Applicant filed his 2017 federal income tax return on March 25, 2019, and there is no evidence that he filed for an extension. He overpaid his taxes, and the residue of \$177 was applied to tax year 2002. (Item 5 at 17-19; AE A at 25-31)

Applicant indicated in his September 2020 response to the FORM that the IRS sent him a letter informing him that it has an open identity theft case for tax years 2014, 2015, and 2017. As a result, he could not submit updated account transcripts for these tax years; however, he did not provide a copy of the IRS letter. Additionally, in his response to the FORM, Applicant provided a copy of his 2018 IRS tax transcript. Applicant filed his 2018 federal income tax return on September 16, 2019, and there is no evidence that he filed for an extension, despite his assertions in his answer to the SOR. Applicant's August 2020 tax transcripts reflects an outstanding balance of \$11,111.24. Applicant's failure to pay this tax debt was not alleged in the SOR; therefore, I will consider it only to evaluate mitigation and the whole person concept. Applicant filed his 2019 federal and state income tax returns on July 1, 2020, in a timely manner, and paid the amount due to the IRS. He received a refund from his state. (AE A at 2, 32-33)

In his response to the FORM, Applicant provided a history of payment activity reflecting all of the payments he made to the IRS in the last five years, not including tax withholding. There is no evidence that he made any payments before January 2020, when he started making \$1,000 payments. Almost \$4,000 of the total payments Applicant made this year were applied to tax year 2010. Because Applicant's delinquent 2010 federal income taxes were not included in the SOR as an allegation, I will consider it only to evaluate mitigation and the whole person concept. Applicant's state tax records reflect that he does not currently owe any outstanding income tax debts for tax years 2011 through 2019. The records he provided do not demonstrate when the 2011 through 2018 returns were filed. (Item 5; AE A at 37-56)

Despite claims in his January 2019 SI that he had quit gambling and did not intend to gamble in the future, Applicant admitted in his October 2020 response to the FORM that "I have not gambled in months...." This statement indicates he continued to gamble despite his declarations that he made in his August 2018 SCA, January 2019 SI, and December 2019 answer to the SOR that he no longer gambled. (Item 3; Item 4; Item 6; AE A at 2)

Applicant's January 2020 credit bureau report indicated his mortgage was past due in the amount of \$10,600, and foreclosure proceedings had been initiated. In his FORM response he provided documentation demonstrating he entered into a trial mortgage

modification plan on January 31, 2020, which became permanent in May 2020. He provided proof of an October 1, 2020 automatic draft from his bank account. There is no evidence in the record that Applicant has obtained credit counseling or currently follows a written budget. (Item 8; AE A at 57-64)

## **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. 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. (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)). “Security 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 security concern under Guideline F 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. . . .

AG ¶ 19 describes conditions that are disqualifying. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (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;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant’s admissions and the record evidence establish AG ¶¶ 19(a), 19(c), 19(f), and 19(i). Applicant failed to make any payments toward his 2011 and 2013 federal

income taxes until the summer of 2020, six to eight months after the SOR was issued and months after he received the FORM. He continues to owe over \$6,000 to the IRS for tax years 2015 and 2016. He provided documentation that he has filed his state income tax returns for tax years 2014 through 2018, but based upon his claims that he filed his state returns at the same time he filed his federal income tax returns, these returns were all filed late, and he provided no evidence of extensions. Applicant admitted to falling behind on his mortgage and tax obligations due to \$65,000 in gambling losses that were incurred between 2012 and 2018. It is unclear from the record evidence where he obtained the money for these losses; however, there is no evidence that he borrowed money or engaged in significant financial transactions to support his gambling habit; therefore, AG ¶ 19(h) is not applicable in this case.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

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

Applicant's IRS tax transcripts reflect that his failure to pay his federal taxes extends back to at least 2002, and includes tax years 2007 and 2010. He also owes over \$11,000 for his 2018 federal income taxes, demonstrating that his tax issues were not infrequent, but have been ongoing since 2002, and they continue to cast doubt on his reliability, trustworthiness, and good judgment. The tax transcripts also reflect that he consistently filed his federal and state income tax returns late every year between 2011 and 2018, further demonstrating his lack of good judgment.

Applicant's financial issues were not the result of illness, loss of employment, divorce, or other conditions that were beyond his control, rather they were caused by his gambling problem. Despite his multiple claims that he no longer gambles, it is clear from the evidence that it is an ongoing problem.

The payments Applicant has made since the SOR was issued do not demonstrate a good-faith effort to resolve his debts. Between August 2018, when he completed his SCA, and January 28, 2020, when he made his first payment to the IRS, Applicant made no demonstrable effort to resolve his tax debt, despite being confronted in December 2018 during his SI. Although he provided evidence that he has been in a repayment plan since January 2020, the IRS tax transcripts reflect a consistent failure to make payments under all of his multiple previous installment agreements that he entered into between 2014 and 2019. Applicant's history of failing to abide by these agreements significantly outweighs his recent payments. Additionally, his history of failing to file his state and federal income tax returns, in a timely manner, is outweighed by his recent efforts, which were initiated after the SOR and FORM were issued to him. Mitigation under AG ¶¶ 20(a), 20(b), 20(d), and 20(g) was not established.

### **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 common sense judgment based upon careful consideration of the applicable 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 Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the financial considerations security concerns raised by his gambling history and outstanding federal taxes. The record lacks sufficient evidence to demonstrate that he is reliable, trustworthy, and exercises good judgment. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:



Paragraph 1, Guideline F:                   AGAINST APPLICANT

Subparagraphs 1.a – 1.g:               Against Applicant

**Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. National security eligibility is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge