



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 19-02633  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

01/28/2022

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on September 25, 2018. On April 30, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 15, 2020. Scheduling of the hearing was delayed by the health precautions imposed in

response to the COVID-19 pandemic. The case was assigned to me on June 2, 2021, and the hearing was tentatively scheduled for July 7, 2021. It was postponed until August 5, 2021, to enable Applicant to retain an attorney. He retained an attorney, who requested a postponement until October 2021. On August 2, 2021, Applicant terminated his agreement with his attorney because he could not afford her fee. I gave him until September 6, 2021, to find another attorney. He decided to proceed *pro se*.

On October 5, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 27, 2021. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. DOHA received the transcript (Tr.) on November 3, 2021.

I kept the record open until November 30, 2021, to enable Applicant to submit additional documentary evidence. He timely submitted AX F through O, which were admitted without objection.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.m, 1.o, and 1.p. He denied the allegation in SOR ¶ 1.n. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 59-year-old help-desk analyst employed by a defense contractor since April 2019. He served on active duty in the U.S. Air Force from January 1989 to January 1993. He worked for various defense contractors from March 2001 to October 2016. He was unemployed from October 2016 to July 2017, self-employed with low income from October 2017 to June 2018, and unemployed from June to September 2018. (GX 1 at 14-23; GX 2 at 9-11.) He has held a security clearance since February 1983. He earned an associate's degree in September 1998 and a bachelor's degree in December 2002. He was married from February 1992 to February 2011. He and his wife were separated for a year before they divorced. (Tr. 29.) He has two adult daughters and an adult stepson. (Tr. 28.)

The SOR alleges failures to timely file federal and state income tax returns, delinquent federal tax debts, a delinquent state tax debt, multiple consumer debts, and two delinquent medical bills. Applicant's tax problems are established by his admissions and tax transcripts. The debts alleged in SOR ¶¶ 1.h-1.p are reflected in credit reports from October 2018 (GX 3), October 2019 (GX 4), and July 2021 (GX 5). The evidence concerning the delinquencies alleged in the SOR is summarized below.

**SOR ¶¶ 1.a and 1.b: failure to timely file federal and state income tax returns for tax years 2011-2018.** After Applicant and his ex-wife separated in February 2010, she claimed the tax exemptions for all three children. Because he could claim no exemptions, he thought that he owed about \$10,000 in federal income tax. (Tr. 31.) Upon

recalculating his taxes with one exemption, he calculated his 2010 federal income tax to be about \$5,300 and his state tax to be zero. (GX 2 at 19, 21; Tr. 34-35.) At the time, his annual gross income was between \$70,000 and \$75,000, and he was paying child support of \$750 per month and maintaining two households. (Tr. 32-34.) He applied for an extension of time to file his federal return, which was granted, but he did not file the return because he could not afford to pay the taxes due for 2010. He did not timely file his 2011 return because he had not yet filed the 2010 return.

In 2011, Applicant increased his income to about \$120,000 by holding two full-time jobs. The IRS placed a lien on his bank account in 2012. In order to have the lien released, he withdrew funds from his retirement account to pay the taxes, without realizing the adverse tax consequences of early withdrawals. (Tr. 36-37.) He did not file his 2013 and 2014 returns because he had amassed a large tax debt and did not know how to proceed. (GX 2 at 12.)

In the fall of 2015, Applicant hired a professional tax preparer to help him file his federal and state income tax returns for 2011 through 2015. (GX 2 at 12.) He submitted IRS account transcripts showing that his 2011 return was filed in January 2016; and his 2014, 2015, and 2016 returns were filed in February 2016. (GX 2 at 23-31.) In his post-hearing submission, he submitted IRS account transcripts showing that the 2012 return was filed in June 2013; his 2019 return was received in June 2020; and his 2020 return was filed in May 2021. (AX G; AX K, AX L.) He submitted IRS wage and income transcripts for 2016 and 2017, and 2018, which do not reflect when the returns were filed. (AX H; AX I.) However, the fact that the IRS agreed to a payment plan indicates that all past-due returns have been filed. He did not submit any state tax transcripts or other proof that the past-due state returns had been filed.

**SOR ¶¶ 1.c, 1.d, 1.e, and 1.f: federal tax debts of \$6,517 for tax year 2011; \$21,033 for tax year 2013; \$2,903 for tax year 2014; and \$15,850 for tax year 2015.** In response to CAF interrogatories in January 2020, Applicant admitted the tax debts for the years alleged in the SOR, and he provided IRS tax transcripts reflecting the amounts alleged. He made an installment agreement in March 2016, which ended in March 2017. He made another installment agreement in April 2017, which ended in September 2018 after two payments were dishonored. (GX 2 at 19, 23-31.)

In June 2021, Applicant made an installment agreement for the taxes due for 2013, 2015, and 2017, providing for payments of \$200 per month. He admitted at the hearing that having a payment agreement in place before the hearing was primarily motivated by the realization that his security clearance was in jeopardy. (Tr. 66.) He made the required payments from July 28, 2021, through October 28, 2021. (AX G.) The payments will increase to \$752 per month in July 2023. (AX A.) He currently earns about \$65,000 per year. (Tr. 59.) He hopes to submit an offer in compromise before the payments increase in July 2023. (Tr. 64/)

**SOR ¶ 1.g: state tax debt of \$10,103.** In July 2021, Applicant entered into an installment agreement providing for monthly payments of \$198.86 for 99 months. The

balance due as of this date was \$15,557. (AX B.) He made the agreed payments in September and October 2021 (AX C; AX D.)

**SOR ¶ 1.h: deficiency of \$27,397 after vehicle repossession.** Applicant testified that his wife leased a vehicle, and the lease was transferred to him after they separated. At the end of the lease, he rolled the excess mileage into a lease on an expensive new vehicle. When he could not afford the payments, he surrendered the vehicle. He made no payments after the voluntary repossession and has taken no action to resolve the debt. (Tr. 75-79.)

**SOR ¶ 1.i: credit-card account charged off for \$6,003.** During a security interview in October 2018, Applicant told a security investigator that he made a payment agreement in September 2018, providing for payments of \$177 per month. He provided no documentation of this agreement or any payments. At the hearing, he testified that he had been making \$100 payments since March 2020. (Tr. 81.) In a post-hearing submission, he provided evidence of a payment agreement providing for monthly \$210 payments. (AX M.) He provided no documentation showing that he made any payments under either agreement.

**SOR ¶ 1.j: credit-union account charged off for \$2,456.** This debt is reflected as charged off for \$3,206 in GX 3; past due for \$1,556 in GX 4; and charged off for \$3,206 in GX 5. In August 2020, he made a payment of \$150, leaving a balance of \$56.76. (AX E.) He paid the balance on November 17, 2021. (AX O.)

**SOR ¶ 1.k: delinquent medical bill for \$1,362.** At the hearing, Applicant admitted this debt and testified that he has taken no action to resolve it. (Tr. 86.)

**SOR ¶ 1.l: utility bill referred for collection of \$248.** Applicant testified that the owner of a home that he was renting promised to pay this bill but did not keep her promise. He conceded that he was responsible for the bill, which is unresolved. (Tr. 86-87.)

**SOR ¶ 1.m: debt referred for collection of \$184.** During Applicant's security interview in October 2018, he told an investigator that this was an unpaid medical bill. (GX 2 at 16.) At the hearing, he testified that the bill was for trash collection and that it had been paid. He did not provide any documentation of payment. (Tr. 87-88.)

**SOR 1.n: delinquent medical bill for \$401.** At the hearing, Applicant testified that this debt had been paid. (Tr. 88.) He did not provide any documentation of payment.

**SOR ¶ 1.o: collection account for \$70.** During the October 2018 security interview, Applicant stated that this was a medical bill. (GX 2 at 16.) At the hearing, he testified that he could not remember this debt. (Tr. 89.) It is not resolved.

**SOR ¶ 1.p: credit union account off for \$1,556.** Applicant asserted and Department Counsel conceded that this debt is a duplicate of the debt alleged in SOR ¶ 1.j. (Tr. 83.)

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## Analysis

### Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The debts alleged in SOR ¶¶ 1.j and 1.p are duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in an applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.p in Applicant's favor.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

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

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

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's failures to file his tax returns and failures to resolve his delinquent debts are numerous, ongoing, and did not arise under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment, periods of underemployment, and his marital breakup were conditions beyond his control. However, those conditions did not prevent Applicant from timely filing his federal and state income tax returns for several years. Furthermore, he has not acted responsibly. He did not seek professional help with his taxes until 2015, and he did not begin filing his past-due federal returns until January 2016. He did not begin paying his past-due federal taxes until March 2016. He made no federal tax payments between September 2018 and June 2021. He did not begin to pay his delinquent state income taxes until September 2021. He submitted no evidence that he had resolved or was resolving the debts alleged in SOR ¶¶ 1.h and 1.k-1.o.

AG ¶ 20(c) is partially established for the delinquent federal tax returns and the tax debt. Applicant consulted with a tax professional, has filed his past-due federal tax returns, and has begun to make payments on the federal tax debt. However, insufficient time has passed to establish a track record of compliance with his federal and state tax installment plans and to establish “clear indications” that his financial situation is under control. To the contrary, Applicant acknowledged at the hearing that he is relying on offer in compromise to avoid the drastic increase in payments under the July 2021 installment agreement.

AG ¶ 20(d) is not established. Applicant admitted that most recent installment agreement with the IRS was motivated primarily by the imminent hearing and the knowledge that his security clearance was in jeopardy. Payment of debts only under pressure of qualifying for a security clearance does not constitute “good faith.” Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Applicant has taken no action to resolve the debts alleged in SOR ¶¶ 1.h, 1.k, 1.l, 1.m, and 1.o. He claimed that he had paid the debts alleged in SOR ¶¶ 1.m and 1.n, but he submitted no documentary proof of any payments. When an applicant claims that a debt has been paid, it is reasonable to expect the applicant to present documentary evidence showing resolution of specific debts. *See, e.g.*, ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

Applicant presented evidence that he had a payment agreement for the debt alleged in SOR ¶ 1.i, but he submitted no evidence of any payments under that agreement. His evidence amounts to a promise to pay the debt, but a promise to pay or otherwise resolve a delinquent debt in the future is not a substitute for a track record of payments or other financially responsible actions. ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

AG ¶ 20(g) is established. Applicant has filed his past-due federal returns and has initiated and complied with payment plans for his delinquent taxes. However, Applicant’s eventual compliance with his tax obligations does not end the inquiry. A security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual’s judgment, reliability, and trustworthiness.

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental 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). A security clearance adjudication is not a vehicle aimed at insuring an applicant’s compliance with the tax laws. The fact that Applicant has filed his past-due returns does not preclude careful consideration of his security worthiness based on longstanding prior irresponsibility. ISCR Case No. 12-05053 (App. Bd. Oct.30, 2014). I am not convinced that Applicant will continue to comply with his



federal and state installment plans if his application for a security clearance is granted and the pressure of qualifying for a security clearance is removed

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's military service and long history of working for defense contractors while holding a security clearance, but they are insufficient to mitigate his irresponsible financial behavior. 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 repeated failures to timely his federal and state tax income tax returns and his delinquent debts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a, 1.j, and 1.p: For Applicant

Subparagraphs 1.b-1.i and 1.k-1.o: Against Applicant

## **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge