



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 20-01641
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

02/07/2022

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 5, 2019. On October 2, 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), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on October 3, 2020, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 26, 2021. Scheduling of the hearing was delayed by the duty restrictions imposed in response to

COVID-19. The case was assigned to me on November 21, 2021. On November 26, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on December 15, 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 December 30, 2021.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations with explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 51-year-old image technician employed by a defense contractor since November 2014. He served on active duty in the U.S. Coast Guard from August 1988 to September 1989 and in the U.S. Air Force Reserve from January 1990 to January 1992. He received honorable discharges after each period of military service. He married in February 1995 and divorced in October 2013. He has three adult children. He has never held a security clearance.

The SOR alleges that Applicant owes \$13,685 in federal income taxes for tax year 2013 and \$13,747 for tax year 2014 (SOR ¶¶ 1.a and 1.b). It also alleges that he has a child-support arrearage of \$12,590 (SOR ¶ 1.c). Upon motion of Department Counsel, I corrected a scrivener's error in SOR ¶ 1.b, which alleged a tax debt of "\$13,747.59.00," by striking the last two zeroes. (Tr. 15.)

Applicant's SCA reflects that he worked in the private sector from at least February 2003 to November 2014. (GX 1 at 15-21.) He was self-employed from February 2013 to November 2014, in three separate businesses jointly owned by him and his wife. He continued to work in the private sector from May 2012 to April 2013, and July to November 2014, but was dependent on income from the three businesses from April 2013 to July 2014. (Tr. 21-22.) He received 20% of the revenue from the businesses, and his wife received 80%. The businesses failed when they lost their biggest client. He worked in the private sector from July to November 2014, when he was hired by his current employer.

In May 2013, Applicant's oldest daughter accused him of sexually abusing her, and he was charged with felony sexual activity with a child. The charges were dismissed and the records expunged after he submitted the results of an exculpatory polygraph. The record does not reflect the entire factual basis for dismissing the charges. Applicant incurred attorney's fees between \$7,000 and \$8,000, responding to his daughter's accusation. (GX 3 at 2.) He paid his attorney by using money that he had saved to pay taxes.

Applicant had been having marital problems for about three years at the time his daughter accused him of abusing her. Their daughter moved out of the family home, and Applicant's wife told him that she wanted to be with their daughter. Applicant filed for

divorce, which was granted in October 2013. He paid for his wife's attorney fees as well as his own, totaling about \$6,000. (Tr. 45-46.)

Applicant filed a Chapter 7 bankruptcy petition in February 2016 and received a discharge in May 2016. The discharged debts were personal consumer debts. (GX 4 at 1; GX 5 at 1; Tr. 49.) The bankruptcy is not alleged in the SOR.

Applicant filed his federal income tax return for 2013 in November 2014. The IRS account transcript for that year reflects that he owed \$13,685, the amount alleged in SOR ¶ 1.a. He filed his federal income tax return for 2014 in February 2016, and the IRS transcript for that year reflects that he owed \$13,747, the amount alleged in SOR ¶ 1.b.

Applicant testified that he hired a tax service in 2013. (Tr. 25.) The tax transcripts reflect appointment of a representative in January 2015, July 2015, August 2015, March 2016, June 2016, June 2017, and June 2018. Applicant testified that his current tax service was the only representative that he hired, and that they helped him to be placed in a non-collectible status. (Tr. 27-28.)

Applicant filed his tax return for 2015 in October 2016, owed \$22, and paid it. The penalty for late filing (\$0.63) was written off by the IRS in November 2016. (AX-A.) He timely filed his federal income tax returns for 2016, 2017, and 2018. For 2016, he received a \$24 credit applied to his tax debt from 2013. He owed \$51 for 2017 and \$26 for 2018, which he paid. (GX 2 at 29-32.) He testified that all his tax returns through 2020 have been filed. (Tr. 34.)

In December 2015, the IRS filed a tax lien against Applicant for \$9,303. (GX 4 at 2.) He contacted the IRS in September 2016 regarding his tax debt. In October 2016, the IRS responded to his inquiry and sent him a letter stating that he owed \$22,145 for tax years 2013, 2014, and 2015, but that his case was closed as non-collectable. The IRS notified him that it might reopen his case if his financial situation improved. It also notified him that he could make voluntary payments, and that he might be a candidate for an offer in compromise. (GX 2 at 8-10.) Applicant testified that he stopped reading the IRS letter after he read that the debt was non-collectable, and he did not notice the provisions for voluntary payments, the possibility of an offer in compromise, or the notice that the IRS might decide to pursue collection if his financial status improved. (Tr. 52-53.) He testified that his tax service told him that the delinquent taxes would be forgiven after ten years. (Tr. 26.)

In April 2020, Applicant asked the IRS for information about tax year 2015. He received a written response informing him that the IRS was not able to process his request at the time. (GX 2 at 27-28.) There is no evidence in the record reflecting a response from the IRS.

In October 2020, Applicant filed an IRS Form 2848, Power of Attorney and Declaration of Representative, listing four attorneys from the same law firm. There is no evidence reflecting what actions, if any, that the attorneys took to resolve the tax debt.

(AX C.) He testified that he did not know that his debt had been removed from non-collectible status until he received the SOR in February 2021, called the IRS, and was informed telephonically by an IRS representative that his debt was no longer in a non-collectible status. (Tr. 30-32.) There is no documentary evidence in the record reflecting the removal of his tax debt from its non-collectible status. In December 2021, he contacted his tax service for help. A letter from the tax service recites that it is “in the process of bringing [Applicant’s] IRS account into full compliance and negotiating a resolution for the balances.” The tax service is hoping for a “formal resolution or compromise” within a few months. (AX B.) (Tr. 31.) Applicant testified that the tax service is waiting for the IRS to post his return for 2020. (Tr. 33.)

In October 2013, Applicant was ordered by the domestic relations court to pay \$1,393 per month in child support. He was unable to pay that amount, but he paid \$100 per week and accumulated an arrearage of \$24,657. In August 2019, the court recomputed his obligation, determined that he had made payments in excess of what he was obligated to pay on the arrearage, and determined that his arrearage was \$12,590, the amount alleged in SOR ¶ 1.c. The court reduced his monthly payments on the arrearage to \$454. (GX 2 at 20-21.) In Applicant’s answer to the SOR, he stated that he had reduced the arrearage to \$5,708. At the hearing, he provided documentation that his child-support arrearage was paid in full in August 2021. (AX D and E.) His children are now adults.

Since about April 2020, Applicant’s monthly net income has been about \$2,005. His monthly expenses have been about \$1,252, leaving a net remainder of about \$753. (GX 2 at 7.) He lives with his mother and drives a car owned by his grandfather. His checking account has a balance of about \$500. He does not have a retirement account or any investments. (Tr. 37-38.) He has bank savings of about \$4,000. A credit report dated March 26, 2021, reflects zero balances on all his credit cards.

### **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).

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 . . . 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; 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 established. Applicant's delinquent tax debts are recent and unresolved, but they were incurred under circumstances making recurrence unlikely, *i.e.*, substantial legal fees to defend his daughter's accusations and legal fees for a divorce resulting in part from his daughter's accusations. His child-support arrearage is not likely to recur, because all of his children are adults.

AG ¶ 20(b) is established. The accusation by his daughter (if it was false), the failure of his three businesses, his divorce, and the lack of timely response by the IRS to inquiries were conditions largely beyond his control. He acted responsibly by hiring a tax service to assist him, keeping in contact with the IRS, timely filing his income tax returns for 2015 and subsequent years, and paying the taxes due for those years. He was negligent in not paying attention to the conditions in the notice of non-collectability when he received it, but he was not in a good financial position to make voluntary payments or negotiate a payment plan because of his limited income and his payments to resolve the child-support arrearage. He was not notified by the IRS that his tax status had changed until he contacted the IRS after receiving the SOR. As soon as he learned about the status change, he promptly contacted his tax service.

AG ¶ 20(c) is not fully established. Applicant has received tax advice and assistance from a legitimate tax service, but the record falls short of "clear indications that the problem is being resolved or is under control."

AG ¶ 20(d) is partially established. Applicant has not resolved his tax debt, but he has resolved the child-support arrearage.

AG ¶ 20(g) is not established. Applicant's tax service had not yet reached an agreement with the IRS by the time the record closed.

### **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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant was sincere, candid, and credible at the hearing. He has suffered multiple financial setbacks, but he has not ignored them. He has limited income and lives frugally. He has resolved the child-support arrearage. He has timely filed his income tax returns and paid the taxes due for 2015 to 2020. He has experienced a well-known and common problem with lack of timely IRS response to inquiries, but he is actively working with his tax service to resolve his tax debt from 2013 and 2014.

I have considered the possibility of granting a conditional security clearance in accordance with Appendix C of the Directive, but I have concluded that it is not necessary. The decision to grant a security clearance is always subject to reconsideration when additional adverse information is found. If Applicant fails to follow through with his current efforts to resolve his tax debt, a reconsideration of his suitability for a security clearance is likely. I am confident that he will continue his efforts to resolve his tax debt, especially since the substantial financial burden of the child-support arrearage has been removed. 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 mitigated the security concerns raised by his delinquent debts.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): `FOR APPLICANT

Subparagraphs 1.a-1.c:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge