



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



In the matter of:  [Redacted]  Applicant for Security Clearance	) ) ) ) )	ISCR Case No. 21-01584
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**Appearances**

For Government: A. H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2022

**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 (SCA) on October 30, 2020. On November 7, 2021, 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 November 17, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on December 7, 2021. On the same day, a complete copy of the file of

relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 4, 2022, but did not respond. The case was assigned to me on March 17, 2022.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted allegations in SOR ¶¶ 1.a-1.j and denied the allegation in SOR ¶ 1.k. His admissions are incorporated in my findings of fact.

Applicant is a 40-year-old public affairs specialist employed by a federal contractor since December 2016. He attended a university from September 2012 to May 2016 but did not receive a degree. He served in the Army National Guard from February 2005 to June 2016 and was honorably discharged as a staff sergeant (pay grade E-6). He has never married and has no children. His SCA reflects that he has never held a security clearance. (FORM Item 2 at 27-28.)

Applicant disclosed in his SCA that he had not filed his federal and state income tax returns since December 2016, and that he owed an estimated \$5,000 in taxes. He did not specify whether his tax debt was federal, state, or both. (FORM Item 2 at 28.) In response to DOHA interrogatories, he stated that he had not filed his federal and state tax returns for tax years 2016 through 2020. He did not know whether he owed any federal taxes. He stated that he owed state taxes and did not know how much he owed in state taxes, but he declared, "I assume a lot." (FORM Item 3 at 3-5.) When he was interviewed by a security investigator, he stated that he did not file his federal and state returns for 2016 because his income was too low to require him to pay taxes. He stated that he did not file his federal and state returns for subsequent years because he was working on personal development and focusing on other things. (FORM Item 3 at 8.) His failures to file federal and state income tax returns are alleged in SOR ¶¶ 1.a and 1.b.

Credit reports from December 2020 and December 2021 (FORM Items 4 and 5) reflect eight student loans placed for collection totaling \$50,151. The last activity on all these loans was in April 2017. They were all placed for collection and assigned to the government in December 2020. Applicant told a security investigator that he had not made any effort to resolve them. (FORM Item 3 at 10.) The delinquent student loans are alleged in SOR ¶¶ 1.c-1.j, which Applicant admitted.

The December 2021 credit report (FORM Item 5) reflects a credit-card account that was charged off for \$2,763 in May 2016. Applicant told the security investigator that he was unaware that it was charged off. (FORM Item 3 at 8.) He submitted no evidence of efforts to resolve the debt. The debt is alleged in SOR ¶ 1.k. Applicant denied this allegation but provided no evidence or explanation to support his denial.

## 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 in the FORM establish the following disqualifying conditions:

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 relevant:

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.

None of these mitigating conditions are applicable. Applicant's financial delinquencies are recent, numerous, and were not incurred under conditions making recurrence unlikely. He submitted no evidence of conditions largely beyond his control, no evidence of counseling, no evidence disputing the debts, or evidence of efforts to resolve them.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law, and it provided for relief measures on Department of Education (DoEd)-owned federal student loans through September 30, 2020. The CARES act provided for automatic forbearance and zero interest charges during the forbearance. The most recent extension of forbearance was on January 20, 2021, when it was extended to loans through May 1, 2022. Appellant's student loans became delinquent in 2017, well before the forbearance went into effect. I am not satisfied that he will pay his delinquent student loans when they are no longer in forbearance.

### **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 honorable military service. I have also considered that failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 his failure to file federal and state income tax returns and failure to address 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.k:

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