



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 20-03246
)	
Applicant for Security Clearance)	

Appearances

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

10/24/2022

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 September 9, 2019. On January 8, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 March 29, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 7, 2022, the case was assigned to an administrative judge on June 15, 2022, and was scheduled for

hearing on July 19, 2022. As the hearing proceeded and both sides submitted their evidence, the assigned administrative judge realized that he had been the department counsel in a previous case involving Applicant in June 2010, after which Applicant's application for a security clearance was granted. (ISCR Case No. 09-03772 (A.J., Jun. 10, 2010).)

As a result of this realization, Applicant requested a hearing before another administrative judge, his request was granted without objection, and the July 19, 2022 hearing was terminated. The case was subsequently reassigned to me on August 9, 2022.

On August 19, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that a new hearing was scheduled to be conducted by video teleconference on September 16, 2022. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 and Applicant's Exhibits (AX) A through F, which had been admitted at the previous hearing, were again admitted in evidence without objection. GX 6, the transcript of the previous hearing, also was admitted without objection.

At the second hearing, Applicant testified and submitted AX G through O, which were admitted without objection. At Applicant's request, I kept the record open until October 17, 2022, to enable him to submit additional documentary evidence. He timely submitted AX P, which was admitted without objection. Department Counsel's comments regarding AX P are attached to the record as Hearing Exhibit I. DOHA received the transcript of the first hearing (Tr-1; GX 6) on July 28, 2022, and the transcript of the second hearing (Tr-2) on September 28, 2022.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.d and denied the allegations in SOR ¶¶ 1.b and 1.e. His admissions are incorporated in my findings of fact.

Applicant is a 57-year-old network operations supervisor employed by a defense contractor since November 2008. He served in the Army National Guard from June 1989 to May 2005 and received an honorable discharge. He receives disability pay of about \$958 per month for a 50% service-connected disability. (Tr-1 at 36.) He married in June 1994 and has two adult children. He has received a security clearance in June 2010.

The SOR alleges failure to file a federal income tax return for 2018 as required and pay the taxes due. It also alleges a delinquent personal loan, a delinquent credit-card account, and a debt for a motorcycle purchase. The four delinquent consumer debts are reflected in credit reports from January, September, and June 2020 (GX 2, 3, and 4.) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: failure to file a federal income tax return for 2018 and failure to pay about \$5,500 in federal taxes due for 2018. When Applicant submitted his SCA in

September 2019, he attributed his failure to timely file his tax return to “illnesses.” (GX 1 at 30.) When a security investigator interviewed him in January 2020, he told the investigator that he hired someone to file his tax returns, but the person took his money and did not file the returns. He told the investigator that a lawsuit against the tax preparer was pending (GX 5 at 3.) He repeated this explanation at the first hearing. (Tr-1 at 88.) He hired another tax preparer and filed his 2018 return in September 2022. It reflected that he owed \$3,696, and he made a \$50 payment. (AX H; AX I.) There is no evidence that the 2018 return had been accepted or processed as of the date of the hearing before me.

Applicant testified that he is waiting to see if the IRS accepts his \$50 payment. He provided no evidence that he has requested a payment plan with the IRS. Instead, he is passively waiting to see how the IRS responds to his token payment. He asserted that he is willing to pay whatever the IRS asks him to pay. He testified he is able to pay the full amount, but he has other matters that require his attention and he wants to give himself “some financial leeway.” (Tr-2 at 21.)

Applicant testified that he received a letter two days before the second hearing informing him that he owes about \$1,800 for tax year 2020. (Tr-2 at 25.) Later in the hearing, he testified that he had just received a letter from the IRS informing him that he owed \$2,300 for tax year 2020. (Tr-2 at 48.) He also testified that he had recently obtained a home-equity loan for \$46,000 that he intended to use to pay all his debts. (Tr-2 at 53.)

In October 2022, Applicant paid \$2,390 for his 2020 federal income taxes and \$1,892 for his 2021 federal income taxes. (AX P.) The taxes due for these two years have been paid in full. As of the date the record closed, he had not made any more payments on his 2018 taxes and did not have a payment agreement for that year’s taxes. His tax debt for 2018 is not resolved.

SOR ¶ 1.b: past-due debt of \$6,034 for a solar panel system. Applicant initially did not recognize this debt because the vendor has the same name as a well-known automobile manufacturer. He disputed the debt because the installation of the solar panels was faulty and resulted in roof leaks. In September 2022, he resolved the debt on favorable terms. (AX L; AX M.)

SOR ¶ 1.c: unsecured personal loan charged off for \$25,979. This debt originated as a five-year personal loan for \$30,000. Applicant testified that he obtained this loan in 2012 and paid approximately \$700 per month for about four years. (Tr-1 at 62; Tr-2 at 35.) He used this loan to finance a vacation trip overseas in June 2014 and “a little bit of extra savings.” (GX 1 at 24; Tr-1 at 63.) When a security investigator interviewed him in February 2020, he told the investigator that he disputed the debt and it was “dropped” by the creditor. (GX 5 at 2.)

At the first hearing, Applicant testified that he contacted the creditor because he received a bill reflecting a balance that he thought was incorrect. He called the creditor but the agent he spoke to simply transferred him to another agent, and no one could verify

the amount due. He testified that the law firm assisting him with his debts asked the creditor to verify the amount but without success. He was unable to produce a copy of the letter from his law firm to the creditor. (Tr-1 at 64-65.) He admitted that he had not paid the debt in full and that he probably owes about \$5,000. (Tr-1 at 67-71.)

At the second hearing, Applicant testified that he thought he paid a lump sum to settle the debt, but he was not sure. (Tr-2 at 40. The January 2020 credit report reflected that the account was closed by the grantor and charged off in January 2015. (GX 2 at 6). The debt is not reflected on the credit reports from June 2020 and September 2020 (GX 3 and 4.). He believes that his law firm resolved the debt. (Tr-2 at 41.) He did not produce any documents supporting his dispute or showing resolution of his dispute.

SOR ¶ 1.d: credit-card account charged off for \$12,804. This debt was reflected in the January 2020 credit report as charged off and closed by the grantor in August 2016. (GX 2 at 6.) It is not reflected on the credit reports from June 2020 and September 2020. Applicant disputed the amount due on this account at the same time he disputed the debt in SOR ¶ 1.c. (Tr-1 at 75.) SOR ¶¶ 1.d and 1.c involve the same creditor, a credit union. He submitted no documents supporting his dispute and no documents reflecting the resolution of this debt. (Tr-2-at 44.)

SOR ¶ 1.e: debt for purchase of a motorcycle placed for collection of \$1,791. In July 2021, Applicant resolved this debt by trading in the motorcycle for which the debt was due on a new motorcycle. He received \$5,000 for trading in the old motorcycle, paid \$8,000 in cash, and financed the balance of \$13,792. (AX J, AX K, AX N, and AX O.)

Applicant's mother was diagnosed with stage 4 lung cancer in 2014, and over the next several years, went through chemotherapy and brain radiation, developed dementia, and contracted COVID. When she was first diagnosed, she was expected to live for six months, but she survived for six years. She moved in with Applicant in the summer of 2015. Applicant incurred uninsured expenses for treatment, medical equipment, and home attendants. He frequently lost time at work caring for her. His SCA reflects multiple medical expenses that he disputed. (GX 1 at 33-37.) He disclosed in his SCA that he fell behind on his home mortgage payments totaling \$2,800. (GX 1 at 32-33.) When his mother passed away in December 2020, he incurred about \$8,000 in funeral and burial expenses. (AX G; Tr-1 at 40-44.)

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 two hearings establish the following disqualifying conditions under this guideline:

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

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

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 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. The long illness and death of Applicant's mother were circumstances largely beyond his control. He acted responsibly by resolving the medical bills and funeral costs. He modified his home mortgage loan and it is now current. The fraud and theft by a tax preparer he hired to prepare his return for tax year 2018, if it occurred, was a condition largely beyond his control, but it is unclear why he attributed his failure to file the return to "illnesses" in his SCA. Even if he was defrauded, he did not act responsibly. He acknowledged in his September 2019 SCA and during his security interview in January 2020 that he had not filed the 2018 return, and he knew that it raised a security concern. Nevertheless, he did not file the past-due 2018 return until September 2022, after the first hearing and more than three years past the due date. An applicant who waits until his clearance is in jeopardy before resolving financial issues "may be lacking in the judgment expected of those with access to classified information." ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). The fact that Applicant has filed his past-due return "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

When Applicant eventually filed his 2018 return in September 2022, he reported that he owed almost \$4,000, but he made only a token payment of \$50. When the record closed on October 17, 2022, he had been approved for a \$46,000 home-equity loan, which was more than enough to pay his federal taxes for 2020 and 2021. He admitted at the second hearing that he was able to pay the 2018 taxes, but that he had "other matters that require his attention" and he wanted to give himself "some financial leeway." That financial leeway apparently included an \$8,000 down payment on a new motorcycle.

At the second hearing, Applicant declared that he intends to use the home-equity loan to pay all his debts, including his tax debt. However, “promises to pay or otherwise resolve delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner or otherwise acting in a financially responsible manner.” ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.a, 1.c, or 1.d. It is established for the debts alleged in SOR ¶ 1.b and 1.e. The fact that the debts alleged in SOR ¶¶ 1.c and 1.d are no longer reflected on credit reports does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. See, e.g., ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019).

AG ¶ 20(e) is not established. Although Applicant claimed that he disputed the debts in SOR ¶¶ 1.c and 1.d, he provided no documentary evidence of the basis for his dispute and no documentary evidence of efforts to resolve the disputes.

AG ¶ 20(g) is not fully established. Applicant has filed the past-due 2018 return, but he submitted no evidence of payment or a payment agreement beyond the single \$50 payment. His eventual compliance with his obligation to timely file a return 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. The fact that Applicant has filed his past-due 2018 return “does not preclude careful consideration of [his] security worthiness based on longstanding prior behavior evidencing irresponsibility.” ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). The unexplained three-year delay in filing the 2018 return diminishes the mitigating effect of filing it.

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 and his long service as an employee of a defense contractor. I have weighed the disqualifying and mitigating conditions under Guideline F and evaluated 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 his 2018 federal income tax return as required, failure to timely pay the taxes due, and failure to resolve the delinquent debts alleged in SOR ¶¶ 1.c and 1.d

Formal Findings

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

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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge