



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 21-01986
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2022

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 November 13, 2019. On December 10, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD 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 December 22, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 10, 2022. On May 12, 2022, 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 June 2, 2022. He responded on June 26, 2022 and submitted Applicant's Exhibit (AX) A, which was admitted in evidence without objection. The case was assigned to me on September 6, 2022.

Evidentiary Issue

The FORM included a summary of a personal subject interview (PSI) conducted on January 16, 2020. (FORM Item 6.) The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 71-year-old project manager employed by a defense contractor. He served on active duty in the U.S. Air Force from July 1969 to April 1973. He attended college and received a bachelor's degree in June 1976. He participated in the U.S. Air Force Reserve Officers Training Corps in college, was commissioned as an Air Force officer, and served on active duty until he retired in November 1993. (FORM Item 6 at 7.) He has worked for defense contractors since December 2007 and for his current employer since August 2008. He first received a security clearance in July 1976.

Applicant married in February 1970 and divorced in March 1994. He married his current spouse in April 1994. He has three adult children.

Applicant disclosed in his SCA that he failed to file federal income tax returns for tax years 2014 to 2018 due to a "great increase in tax owed," which he could not afford to pay. He estimated that he owed \$40,000 in federal taxes. (FORM Item 3 at 38.) He attributed the tax increase to an inheritance from his parents. (FORM Item 6 at 6.) He did not provide any information about the amount or the form of the inheritance or the circumstances in which the inheritance occurred.

Tax transcripts submitted by Applicant in response to DOD CAF interrogatories did not include a transcript for 2014, but he admitted the debt for that tax year. The transcript for 2015 reflects that Applicant obtained an extension of time and filed his 2015 return on

October 21, 2019. He did not file a return for 2016, and the IRS filed a substitute return. He obtained an extension of time to file and filed his 2017 return on August 26, 2019. He obtained an extension of time and filed his 2018 return on September 9, 2019. (FORM Item 4 at 7-18.)

Applicant hired a professional tax service to negotiate and settle his tax debt. In June 2020, he and his wife made an installment agreement with the IRS providing for payments of \$575 per month. (FORM Item 2 at 4.) Applicant's response to the FORM included documentary proof of the agreed payments through May 2022. (AX A.)

Applicant was given a vacation time-share property by "an elderly acquaintance who could not afford to maintain it." When the annual dues doubled, Applicant stopped paying them and took action to terminate his membership. (FORM Item 4 at 5.) A credit report from December 2019 reflected a delinquent debt placed for collection of \$3,631. (FORM Item 5 at 2.) The debt was for unpaid yearly maintenance dues. The time-share owner agreed to waive the past-due fees in return for a quit claim deed. Applicant submitted the quit claim deed in December 2020, and the debt was resolved. (FORM Item 2 at 6-7.)

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 SOR alleges federal tax debts for tax years 2014 to 2018 (SOR ¶ 1.a-1.e) and a debt to a vacation resort placed for collection of \$3,631 (SOR ¶ 1.f). 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).

Because the SOR does not allege failure to file tax returns, Applicant's failure to timely file his returns for 2014 through 2018 may not be an independent basis for revoking his security clearance. However, it may be considered to assess his credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether he has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's repeated failures to timely file his federal income returns for these limited purposes.

There is no federal inheritance tax. However, income from inherited assets may be taxable. The record does not reflect whether Applicant inherited assets from his parents, which would be non-taxable, or whether the assets he inherited generated income, which would be taxable. He has not disputed the allegations, which reflect that the IRS determined that he had taxable income but did not pay the taxes due. His admissions and the evidence in the FORM are sufficient to 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 for the time-share debt, because it is unlikely that someone will give Applicant another vacation property that he cannot afford to maintain. It is not established for Applicant's federal tax debts, which are recent and numerous. Further inheritances are unlikely to recur, but Applicant has not provided sufficient information about the nature, source, or circumstances of the taxable income to enable me to determine whether recurrence of taxable income from inherited assets is unlikely to recur.

AG ¶ 20(b) is not established. While the death of Applicant's parents was a circumstance beyond his control, he has not provided sufficient information about the circumstances of the inheritance to show that the tax debt was due to a circumstance beyond his control.

AG ¶ 20(c) is established. Applicant resolved the time-share debt. He has obtained assistance from a tax professional, and the tax problem is being resolved.

AG ¶¶ 20(d) is established for the time-share debt. It is not established for the tax debt. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999). Applicant did not demonstrate adherence to duty or obligation regarding his taxes. He discovered in 2015 that he owed substantial federal taxes, but there is no evidence that he took action to resolve his tax debts until he submitted his SCA in November 2019, was interviewed by a security investigator in January 2020, and realized that his tax debt was an impediment to continuing his security clearance. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment and self-discipline expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(g) is established. However, the existence of a payment arrangement with an appropriate tax authority does not compel a favorable decision. ISCR Case No. 17-03462 (App. Bd. Jun. 26, 2019). The fact that Applicant has negotiated a payment arrangement "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). Applicant knew for several years that he had a tax problem, but he did not act responsibly regarding his tax debt until he realized that it was an impediment to continuing his security clearance.

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 as well as his long record of employment by defense contractors while holding a security clearance. I have considered that he is now complying with a payment agreement for his federal income tax debts. Because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about the circumstances that led to his tax debt. 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 delinquent federal tax debt.

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.e: **Against Applicant**

Subparagraph 1.f: **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