



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



In the matter of: )  
)  
) ISCR Case No. 22-00758  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2022

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**Decision**

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CERVI, Gregg A., 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 August 5, 2021. On May 9, 2022, the Department of Defense 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 (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on June 16, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on July 14, 2022. On July 15, 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 July 29, 2022. He submitted material in response to the FORM that was collectively marked as Applicant Exhibit (AE) A, which I admitted without objection. He did not object to the Government's exhibits. The case was assigned to me on October 3, 2022. Government Exhibits (GE) 2-5 are admitted into evidence without objection. The FORM identified the SOR and Applicant's Answer to the SOR as GE 1; however, they are already part of the record.

### **Findings of Fact**

Applicant is a 53-year-old lifecycle management engineer, employed by a defense contractor since 2001. He earned a bachelor's degree in 2005 and a master's degree in 2006. He married in 2010 and has three children. He has held clearance eligibility since at least 2001.

The SOR alleges under Guideline F that Applicant is delinquent on Federal taxes and other debts totaling about \$45,315. His debts include Federal taxes owed for tax years 2018 and 2019 totaling over \$25,000. The remaining 15 alleged debts are charged-off and collection accounts. Applicant admitted all of the allegations with explanations, except a \$64 insurance company collection account, which he denied as his debt but said he will nonetheless pay it by December 2024. His admissions and the Government's documentary evidence are sufficient to support the SOR allegations.

Applicant explained that in January 2018, his spouse started a job that ended within six weeks, resulting in a loss of 35% of their household income. In addition, the following circumstances caused a financial strain on Applicant and his family: caring for their pregnant daughter-in-law and child in May 2019, while their son was in military basic training; his spouse's surgery; and full-time care for their infirmed parents. As a result, his wife lost 15 months of income that would have contributed to the family's finances. He stated that his spouse started a new job in August 2020, and they have paid about \$37,724 in non-SOR debts directly or through garnishments, and have about \$43,279 in debts left. He said that about 25% of his debts are being resolved through garnishments that began in January 2021. Applicant expects most of the SOR debts to be resolved by 2023 or 2024. (Ans.)

Applicant provided documentary evidence to show that he is in a repayment arrangement with the IRS for his delinquent Federal taxes (SOR ¶¶ 1.a and 1.b). He submitted a page from an undated IRS online payment agreement that shows he is scheduled to pay \$750 per month on an installment plan; however, he did not show the terms of the agreement, when payments would begin, or whether any payments have been made to date. He also provided evidence that he has resolved SOR ¶ 1.c, an appliance company account, via garnishment, totaling \$5,763. No other documentary evidence was provided of his efforts to investigate, pay, dispute, or otherwise resolve the remaining SOR debts, or of his current financial status. I am not aware of any financial

counseling or budgeting assistance he may have received, or evidence of substantiated disputes of any of debts.

### **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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant is indebted on Federal taxes and other delinquent debts, totaling over \$45,000. The documentary evidence in the record and Applicant's admissions are sufficient to establish the disqualifying conditions in AG ¶¶ 19(a), (c), and (f).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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;

(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;

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

(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

(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 the above mitigating conditions are fully established. Applicant has accumulated delinquent debts, largely due to circumstances outside of his control. However, he has not shown sufficient evidence to conclude that most of the debts are in the process of or have been resolved. The Appeal Board has ruled that even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. No such efforts were substantiated in this case for most of the SOR debts. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

Despite Applicant's current online payment agreement with the IRS, his tax debts remain outstanding. Although Applicant deserves credit for the steps he has made thus far to satisfy his delinquent tax debts, there is not yet a track record of payments to conclude that he is along the path of mitigation of his delinquent taxes. Applicant is credited with resolving past delinquencies not alleged in the SOR, but he has not shown persuasive evidence of efforts to resolve the remaining SOR debts, nor has he shown evidence of his overall financial responsibility. However, the debt in SOR ¶ 1.c is resolved.

There is insufficient evidence to determine that Applicant's financial problems will be resolved within a reasonable period and that he can obtain and maintain a measure of financial responsibility. No evidence of formal financial counseling was submitted. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. No mitigation credit is applicable.

## 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 his spouse's employment history and impediments to her contributions to the family's finances, her medical issues, and their required periods of financial and physical support for family members. 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 debts or any action he may have taken to address them. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person, including exceptions available under Appendix C of SEAD 4. I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies.

## 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.b, 1d-1.q: Against Applicant

Subparagraph 1.c: For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information. Clearance is denied.

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Gregg A. Cervi  
Administrative Judge