



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 21-01711
)	
Applicant for Security Clearance)	

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

06/22/2023

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 on November 7, 2016. On September 22, 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 December 29, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 6, 2022. The case was assigned to me on March 24, 2023. On April 4, 2023, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 4, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and presented the testimony of one witness. He did not submit any documentary evidence. I kept the record open until May 19, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. DOHA received the transcript (Tr.) on May 15, 2023. The record closed on May 19, 2023.

Findings of Fact

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

Applicant is a 61-year-old part-time training coordinator employed by a defense contractor since November 2008. He also works full time as a city firefighter. He has a high-school education. He married in May 1988 and has one child. He has held a security clearance since August 2006.

The SOR alleges that Applicant failed to file federal income tax returns as required for tax year 2008 (SOR ¶ 1.a) and tax years 2009 through 2018 (SOR ¶ 1.b); and that he failed to file state income tax returns as required for tax years, 2011, 2012, 2013, 2015, and 2017 (SOR ¶ 1.c). It also alleges that he owes about \$18,645 in federal taxes for tax years 2012, 2014, 2015, 2016, 2018, and 2019 (SOR ¶ 1.d).

Applicant testified that he has not had any income as a defense contractor since COVID. As a city firefighter, he earns about \$2,200 per month. (Tr. 16) He also works intermittently as a logistician for another government agency. His federal income tax return for 2021 reflected total wages of \$129,874. (AX E)

Applicant's wife is employed as the office manager for a dentist. Her pay varies between \$1,200 and \$1,600 per month. (Tr. 57)

In Applicant's answer to the SOR, he stated that his wife handles the family finances, including their taxes. He was unaware that his wife began suffering from depression and had not filed their tax returns or paid the taxes due. His wife is now taking medication and receiving therapy. She testified that she first began dealing with depression when her mother passed away in 1993. She was able to control her depression until her father passed away in 2006. She testified that when she is frightened, she stops functioning. After trying different medications, she stabilized around 2010 or 2011. (Tr. 60, 64)

Applicant's wife testified that, in 2016 or 2017, she retained someone who represented himself as a tax professional. About a year and a half ago, she found out that this person had not taken the necessary steps to rectify their financial problems. (Tr. 63)

Applicant's answer to the SOR admitted failing to file federal income tax returns for 2008 and 2009. He stated that he was unable to obtain tax information for tax years 2008 and 2009 because the IRS does not keep tax information for more than 10 years. In his answer to DOHA interrogatories and his answer to the SOR, he provided the following information about their federal tax filings.

Tax Year	Date Filed	Amount Owed	Evidence
2010	9-12-16	\$335	Answer at 16, 17, 43
2011	10-14-20	\$0	Answer at 22, 49; GX 4 at 11
2012	10-14-20	\$178	Answer at 1, 28; GX 4 at 11
2013	3-21-16	\$0	Answer at 3, 30; GX 4 at 18; AX B
2014	6-8-15	\$5	Answer at 4, 31; GX 4 at 19; AX C
2015	12-02-19	\$5,827	Answer at 6, 33; GX 4 at 11
2016	7-10-17	\$1,133	Answer at 8, 35; GX 4 at 11
2017	10-21-19	\$5,821	Answer at 10, 37; GX 4 at 11
2018	5-20-19	\$5,253	Answer at 12, 39; GX 4 at 11
2019	8-17-20	\$426	Answer at 13, 40; GX 4 at 11
2020	6-28-21	\$0	Answer at 14, 41; GX 4 at 29
2021	4-15-22	\$53	AX D
2022	5-1-23	\$2,162	AX E

In September 2013, a state tax lien was filed against Applicant for unpaid taxes. (GX 2 at 19. His pay was garnished for \$300 per month to satisfy the lien. (GX 1 at 31; GX 4 at 9)

In response to DOHA interrogatories (GX 4 at 13), Applicant stated that he does not currently owe any state income taxes. He reported that he filed his state income tax returns as follows:

- 2011 return filed in October 2019;
- 2012 return filed in October 2019;
- 2013 return filed in March 2016;
- 2014 return filed in June 2015;
- 2015 return filed in December 2019;
- 2016 return filed in July 2017;
- 2017 return filed in October 2019;
- 2018 return filed in May 2019;
- 2019 return filed in October 2020; and
- 2020 return filed in June 2021.

In May 2023, Applicant and his wife entered into a payment agreement with the IRS, providing for monthly payments of \$357 beginning June 20, 2023. Applicant testified that they owe about \$22,000 in federal taxes. (Tr. 44.) They had not yet made any

payments as of the date of the record closed. The agreement requires that they timely file their returns and pay the taxes due for the next 10 years. (AX A)

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 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(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 not established. Applicant's failures to timely file federal and state tax returns are numerous, recent, and were not due to conditions making recurrence unlikely. His federal tax debt is recent, ongoing, and was not due to conditions making recurrence unlikely.

AG ¶ 20(b) is not fully established. The periods of depression suffered by Applicant's wife were conditions largely beyond his control, but she testified that her condition stabilized in 2010 or 2011. The inaction of a purported tax professional hired in 2016 or 2017 also was a condition beyond Applicant's control. However, he has not acted responsibly. His pay was garnished in 2013 for delinquent state income taxes. Nevertheless, he paid no attention to his tax obligations until he submitted his SCA in November 2016. Even after submitting his SCA, he continued his repeated failures to timely file federal and state income tax returns. He did not enter into a payment agreement for his delinquent federal taxes until May 2023.

AG ¶ 20(d) is not fully established. Applicant did not file his past-due tax returns until he realized that his security clearance was in jeopardy. The fact that Applicant has filed his past-due returns "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). Actions motivated by the pressure of qualifying for a security clearance do not demonstrate "good faith." Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(g) is established for the past-due federal and state returns that have been filed. It is not established for the federal tax debt. Applicant has a payment agreement for his federal tax debt, but it is too soon to determine if he will comply with his agreement. As of the date the record closed, the payment agreement amounted only to a promise to

pay the debt. Promises to pay a debt 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).

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). Applicant was sincere and candid at the hearing, but he did not display any sense of urgency in resolving his tax issues. Even after being put on notice that his security clearance is at risk, he still has not significantly increased his involvement in family finances. At the hearing, he repeatedly deferred financial questions to his wife, indicating his continued lack of involvement in family financial matters. I am not confident that his tax problems will not recur. 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 failures to timely file federal and state income tax returns and pay the taxes due.

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.d:

Against 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