



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



In the matter of:)
)
) ISCR Case No. 23-00707
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey T. Kent, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2023

Decision

HALE, Charles C., 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 February 23, 2021. On June 13, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD 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 July 15, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on August 8, 2023. On August 9, 2023, 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 August 24, 2023, and submitted a Response along with a letter dated October 6, 2023, from a financial firm (Firm) and documentation of a tax payment to the IRS, which were admitted in evidence as Applicant's Exhibits (AE) A and B. The case was assigned to me on November 8, 2023.

Findings of Fact

In Applicant's Answer to the SOR, he denied the allegations in SOR ¶¶ 1.a-1.c on the basis the amounts were wrong. He admitted the allegation in SOR ¶ 1.d. His admissions are incorporated in my findings of fact.

Applicant is a 63-year-old federal contractor employed by various defense contractors since 2007. He served honorably in the United States Air Force from 1983 until 2007. He holds a bachelor's degree from a U.S. university. He has held a security clearance during both his military and civilian careers. He married in 1988 and has three adult children.

SOR ¶¶ 1.a. through 1.c. allege delinquent Federal taxes totaling about \$223,000 for tax years 2016, 2017, and 2018. (Item 6.) SOR ¶ 1.d alleges failure to timely file his Federal tax returns for tax years 2012, 2013, 2014, 2015, 2019, 2020, 2021, and 2022. (Item 6; Item 8.) The evidence concerning his taxes is summarized below.

SOR ¶ 1.a: indebted to the Federal Government for delinquent taxes for tax year 2016 in the amount of \$38,423. In Applicant's answer to the SOR he does not deny the delinquency. (Item 6 at 26.) He denies the delinquent amount. With his Answer he included an IRS-processed payments history (payment history) showing payments through August 25, 2021. It showed on October 31, 2016, he made a \$120 payment to the IRS for tax year 2016. There were no further payments for the 2016 tax year shown on the payment history in 2017, 2018, 2019, 2020, or 2021. During the period reflected on the payment history he made over \$129,000 in payments to the IRS for tax year 2010 between September 2016 and August 2021. There were also over \$11,000 in payments to the IRS for tax year 2011 made between August 2019 and February 2020. (Answer at 4-11.)

SOR ¶ 1.b: indebted to the Federal Government for delinquent taxes for tax year 2017 in the amount of \$104,412. In Applicant's Answer to the SOR, he does not deny the delinquency but denies the delinquent amount. (Item 6 at 30.) He states the delinquent amount is \$17,211. The payment history did not show any tax year 2017 payments. As noted above, he was making payments towards tax years 2010 and 2011.

SOR ¶ 1.c: indebted to the Federal Government for delinquent taxes for tax year 2018 in the amount of \$80,779. In Applicant's Answer to the SOR, he does not deny the delinquency but denies the delinquent amount. (Item 6 at 31.) He states the delinquent amount is \$18,756. The payment history did not show any tax year 2018

payments. As noted above, he was making payments towards tax years 2010 and 2011.

SOR ¶ 1.d: failure to timely file Federal income tax return for tax years 2012, 2013, 2014, 2015, 2019, 2020, 2021, and 2022. Applicant admits the allegation. (Item 6 at 18, 20, 22,24,34,36,37; Item 8 at 2.) He states in his Answer that “all returns required by the IRS have been filed and are being processed to determine my outstanding balance due, if any,” As part of his Answer, he offered a letter dated June 27, 2023, from the Firm he hired to assist him in completing these outstanding tax returns. The Firm stated it had sent the tax returns in question to the IRS and that the IRS had granted a hold on any collection enforcement until July 27, 2023, to allow the tax returns to be processed. (Answer at 3.) In his Answer he cites his multiple moves between 2007 and 2020; being disorganized; and “not being disciplined enough to keep track of important papers” for why he had not filed the tax returns in question. He explained that when he was working overseas his spouse would forward the mail and he would misplace the papers. He states he hired the Firm to make the necessary tax filings with the IRS so he can negotiate a payment plan to resolve his tax debt. (Answer.)

The Firm stated it had “advised [Applicant] to pay a lump sum amount to lower the threshold of the total amount due to under \$250,000.00.” (AE A.) He included an IRS transaction receipt dated October 5, 2023, showing the IRS had accepted a \$11,104 lump-sum payment. (AE B.) The Firm stated the IRS Collections unit had advised them that after the payment processed and had been deducted from the total amount owed by Applicant for the various tax years, then Applicant would begin to make \$3,500 monthly payments commencing on or around the November timeframe. (AE 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. . . . Affluence that cannot be explained by known sources of income is also a security concern insofar as it may

result from criminal activity, including espionage.

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 documentary evidence in the record establish the following disqualifying conditions under this guideline:

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 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(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 delinquent tax debts and past-due tax returns are numerous, recent, and did not occur under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant made over \$129,000 in payments for tax year 2010 between September 2016 and August 2021. He attributed his current tax issues to having two households and the difficulty maintaining his records during multiple moves. His tax problems were not caused by conditions beyond his control. He has not acted responsibly toward his Federal tax debt.

AG ¶ 20(d) and AG ¶ 20(g) are not established for the Federal tax debt alleged in SOR ¶¶ 1.a, 1.b, and 1.c. Applicant is credited with \$11,000 payment towards the alleged delinquency as part of a planned payment agreement. The Firm stated any potential payment agreement would not commence until at least November 2023, after the IRS had processed and accepted the delinquent tax returns. To establish a meaningful track record of debt reform, an applicant is required to demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. See, e.g., ISCR Case No. 14-00504 at 3. After considering all the record evidence and the favorable evidence of a onetime payment towards the alleged tax debt and his history of payments on a nonalleged tax debt, I find these favorable actions are outweighed by the unfavorable evidence of a lack established payment agreement with the IRS. The prospect of a future payment plan standing alone does not mitigate AG ¶¶ 20(d) and 20(g) and resolve the all security concerns. See, e.g., ISCR Case No. 17-01807 at 3–4 (App. Bd. Mar. 7, 2018).

AG ¶ 20(g) is not established for SOR ¶ 1.d. Accepting the Firm's October 2023 letter that Applicant had recently filed his tax returns for the years in question, this favorable action is outweighed by the unfavorable evidence of his repeated failure to fulfill his legal obligations to file tax returns in multiple years (tax years 2012, 2013, 2014, 2015, 2019, 2020, 2021, and 2022). Applicant's repeated failure to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017).

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's payment agreement with the IRS, and the evidence of some action by a tax professional are mitigating factors, but

they are insufficient to overcome the security concerns raised by his long history of tax delinquency, dating back to 2012. 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 Federal tax debts and failure to timely file his Federal income tax returns.

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 grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge