



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



In the matter of:)	
)	
)	ISCR Case No. 23-00249
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2024

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 (SCA) on January 14, 2022. On May 16, 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 June 14, 2023, and requested a decision on the written record without a hearing on June 30, 2023. Department Counsel submitted the Government’s written case on August 10, 2023. On August 29, 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. The Government's evidence is identified as Items 2 through 8. He received the FORM on September 12, 2023, and provided a written Response on October 10, 2023. There were no objections to any of the evidence and Items 2 through 8 are admitted into evidence. The case was assigned to me on January 3, 2024.

Evidentiary Issue

FORM Item 4 is a summary of an enhanced subject interview (ESI) conducted on December 5, 2022. The ESI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the ESI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the ESI; make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate; and object on the ground that the reports are unauthenticated. I conclude that Applicant waived any objections to the ESI summary by failing to respond to the FORM. "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 the allegations in SOR ¶¶ 1.a-1.b, 1.e, and 1.h and he denied SOR ¶¶ 1.c-1.d and 1.f-1.g. His admissions are incorporated in my findings of fact.

Applicant is a 58-year-old technician. He first held a clearance in 2006 while working for a government agency from June 2006 to July 2017 (Item 2 at 14, 51.) He was unemployed from August 2017 to April 2018 and again from October 2018 to January 2019. (Item 2 at 12-13.) He has completed some college course work, has been married to his current spouse since 2014, and has one child. (Item 2.) He divorced his first spouse in 2013. (Item 2 at 20.) He has over \$52,000 in alleged consumer debt and a delinquent tax debt to the Federal government totaling approximately \$60,803.

In his Answer, Applicant cites his illness, a loss of records and other unspecified "extenuating circumstances" for his financial difficulties. He notes he is on the road to "repair and recovery" of his financial situation. As part of his Answer, he provided a June 2023 letter from his accountant to the IRS, which summarizes his personal situation and the reason for him not filing the tax returns in question until 2023. The accountant cites to the IRS: 1) an out of state move that his employer had initially approved but was then rescinded, which he elected to proceed forward with requiring that he sell his house in state A; 2) a medical condition that was "severely affected" by the move requiring him to be hospitalized for months; and 3) being unable to work due to his medical condition, which resulted in him filing a lawsuit against his employer. (Answer at 4.) He included the tax returns for tax years 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022 with his Answer.

In his October 2023 Response to the FORM, he states he has spent years attempting to obtain the correct income reporting documents from his tenure with the government agency, which had incorrectly reported his income for tax years 2015, 2016, and 2017. He states that after “many futile attempts to obtain the correct form, and only after hiring tax professionals to help resolve the cascading issue, was [he] able to bring [his] tax return filings current for all outstanding years through 2022.” (Response.)

In Applicant’s FORM Response he states most of his consumer debt was due to unemployment during the pandemic. (Item 3 at 12-13.) He states, “I have been gainfully employed and have been and remain active in resolving all outstanding obligations.” (Response at 1.)

SOR ¶ 1.a: a delinquent home equity loan that has been charged off in the amount of \$47,450. Applicant admits the debt. He offers no documentation to support his statement that he contacted the creditor and is working to resolve this debt, which he lists as not paid in his response to the September 2022 Government interrogatories. In his interrogatory response he marks that he is not making payments but has made arrangements. (Item 3 at 3.) The debt was assigned in April 2006, with a last activity date of December 2018. (Item 5 at 2; Item 6 at 2.)

SOR ¶ 1.b: past-due credit-card account charged off in the amount of \$1,580. Applicant admits the debt. He offers no documentation to support his statement that he has contacted the creditor and is working to resolve the debt, which he lists as not paid in his response to the September 2022 Government interrogatories. He marks that he is not making payments but has made arrangements to resolve the debt. (Item 3 at 3.) The debt was assigned in August 2018, with a last activity date of September 2019. (Item 5 at 2; Item 6 at 2.)

SOR ¶ 1.c: a delinquent bank account charged off in the amount of \$1,282. Applicant denies the debt. He offers no documentation to support his statement that he has contact his creditor and is working to resolve this debt, which he lists as not paid in his response to the September 2022 Government interrogatories. He marks that he is not making payments but has made arrangements to resolve the debt. (Item 3 at 3.) The debt was assigned in April 2017, with a last activity date of January 2019. (Item 5 at 2; Item 6 at 2.) During his security clearance interview he did not offer any information on the account and told the investigator he would work with a credit repair company to either “deal with..., dispute..., or validate the account.” (Item 4 at 6.)

SOR ¶ 1.d: past-due consumer account placed for collection in amount of \$824. Applicant denies the debt. In his response to the September 2022 Government interrogatories, he marks that the debt is paid and notes he is waiting for payment confirmation to be provided. (Item 3 at 4.)

SOR ¶ 1.e: past-due consumer account placed for collection in amount of \$814. Applicant admits the debt. He offers no documentation to support his statement that he has contacted the creditor and is working to resolve this debt, which he lists as

not paid in his response to the September 2022 Government interrogatories. He marks that he is not making payments but has made arrangements to resolve the debt. (Item 3 at 4.) The debt was assigned in May 2019, with a last activity date of October 2018. (Item 5 at 2; Item 6 at 3.)

SOR ¶ 1.f: past-due consumer account placed for collection in amount of \$173. Applicant denies the debt. In his response to the September 2022 Government interrogatories, he marks that the debt is paid and notes he is waiting for payment confirmation to be provided. (Item 3 at 5.) The debt was assigned in October 2018, with a last activity date of February 2017. (Item 5 at 2; Item 6 at 3.)

SOR ¶ 1.g: indebted to the Federal Government for delinquent taxes in the amount of \$60,803 for the tax years 2016 and 2017. Applicant denies the debt. Applicant in his Answer stated all the outstanding tax returns that have been filed by his accountant. As a result of these filings, he states he had reduced his tax liability to below \$4,000 and had begun the process of establishing a payment plan with the IRS to resolve his outstanding balances. He offers no supporting evidence he is in a payment plan with IRS.

SOR ¶ 1.h: failure to timely file Federal income tax return for tax years for at least tax year 2015, 2018, 2019, 2020, and 2021. Applicant admits the allegation. He offers his tax returns for the alleged years as well as tax year 2022. His response to the Government interrogatories shows he engaged a tax preparer in August 2022. During his security clearance interview he told the investigator he lost a “substantial number of records during his divorce” for tax years “2015 to 2019” and he gave the same reason for tax year 2020 but modified the window to “years 2015 to 2020.” (Item 2 at 52-55; Item 4 at 7.) He did not address how his 2013 divorce resulted in his failure to timely his Federal income tax returns. On his SCA and during his security clearance interview he stated he had been working with an accountant. (Item 2 at 52-55; Item 4 at 7.)

During his February 2022 security clearance interview Applicant said he would seek assistance from a credit repair company (Company). He contacted the investigator after his interview and advised the investigator that the Company he was working with had located the debts on his credit report, which should not have been sent to collections. He stated the Company would dispute all listed accounts on his credit report. He added the Company thought there could be an issue with identity theft. (Item 4 at 10.)

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. . . .

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 has numerous unresolved delinquent debts. He failed to timely file his 2015, 2018, 2019, 2020, and 2021 federal income tax returns. He is indebted to the federal government of unpaid federal income taxes. The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are established by the evidence:

- (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.

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

AG ¶¶ 20(a) and 20(d) do not apply. Applicant has not established that he has made a good-faith effort to pay or resolve his debts or shown that he has acted in a reasonable and responsible manner in addressing these financial problems. He provides documentation of his actions that he claims in his security clearance interview or in his response to the Government interrogatories. To receive full credit under Mitigating Condition AG ¶ 20(d), an applicant must initiate and adhere “to a good-faith effort to repay overdue creditors or otherwise resolve debts.” He has stated his intentions to act but has not resolved any debts. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He has not provided documentary evidence of payments or other action on the debts alleged in the SOR. The Directive does not define the term “good faith.” Good faith “requires a showing that a person acted in a way that shows reasonableness, prudence honesty, and adherence to duty or obligation.” See, e.g., ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001). Applicant’s delinquent taxes from tax years 2016 and 2017 are unresolved. He cites various reasons for his delinquent taxes. He has not shown he has initiated a payment plan with the IRS. See, e.g., ISCR Case No.12-01664 at 3 (App. Bd. Jan. 17, 2014).

Applicant attributes his debts to an illness, periods of unemployment, and his divorce. These events were beyond his control. The first prong of AG ¶ 20(b) applies. For full consideration under AG ¶ 20(b), however, Applicant must establish that he acted responsibly under the circumstances. He has not done so. Even if Applicant’s debts occurred largely due to circumstances beyond his control, he did not provide sufficient evidence that he acted responsibly under the circumstances to resolve them. AG ¶ 20(b) does not apply.

AG ¶ 20(g) is not established. Applicant offered evidence he had recently filed his tax returns for the years in question. He declared his filing issues on his SCA citing his 2013 divorce for not being able to file for tax years 2015 to 2019 and gave the same reason for tax year 2020. He did not support why his 2013 divorce resulted in his repeated failure to fulfill his legal obligations in tax years 2015 through 2020.

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 and applying the adjudicative factors in 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 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). Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a-1.h:	Against Applicant
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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