



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 23-01151
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro Se*

02/02/2024

**Decision**

HOGAN, Erin 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 July 1, 2022. On July 3, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR on May 12, 2023, and requested a decision based on the written record in lieu of a hearing. On August 31, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 12. He was given an opportunity to submit a documentary response setting forth objections, rebuttal,

extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on September 12, 2023. He was given 30 days to submit a Response to the FORM. He did not submit a response. The case was forwarded to the DOHA Hearing Office on November 2, 2023, and assigned to me on January 3, 2024.

### **Evidentiary Matters**

Items 1 through 3 contain the pleadings in the case and are part of the record. Items 4 through 12 are admitted into evidence. Applicant did not respond to the FORM.

### **Procedural Matters**

In Section III of the FORM, the Government proposed to amend the Statement of Reasons by adding the following allegations under Guideline F:

d. You are indebted to the [State] for a tax lien entered against you in 2010 in the approximate amount of \$2,705.92. As of the date of the Amendment to the Statement of Reasons, the lien remains unpaid.

e. You are indebted to the [State] for a tax lien entered against you in 2016 in the approximate amount of \$923.72. As of the date of the Amendment to the Statement of Reasons, the lien remains unpaid.

f. You are indebted to the [State] for a tax lien entered against you in 2019 in the approximate amount of \$5,141.54. As of the date of the Amendment to the Statement of Reasons, the lien remains unpaid.

g. You are indebted to the [State] for a tax lien entered against you in 2022 in the approximate amount of \$2,060.18. As of the date of the Amendment to the Statement of Reasons, the lien remains unpaid.

h. You are indebted to [a credit card company] on an account that has been charged off in the approximate amount of \$391. As of the date of the Amendment to the Statement of Reasons, the account remains delinquent.

i. You are indebted to [a collection company] for an account that has been placed for collection by [a credit card company] in the approximate amount of \$447. As of the date of the Amendment to the Statement of Reasons, the account remains delinquent.

Applicant was given the opportunity to admit or deny each allegation when he was served the FORM. He did respond to the FORM. Proper notice was given to Applicant. I approve the Amendment to the SOR.

### **Findings of Fact**

Applicant, age 45, is a prospective employee of DOD contractor who is seeking a security clearance. If he receives a security clearance, he will be hired by the sponsor.

He earned a bachelor's degree in 2000. He is divorced and has one child born in 2022. He currently works full-time in another position.

The original SOR alleged Applicant failed to file federal income tax returns for tax years 2020 and 2021 (SOR ¶ 1.a); failed to file state income tax returns for tax years 2020 and 2021 (SOR ¶ 1.b) and owed approximately \$6,072 for a charged off account (SOR ¶ 1.c: Item 5 at ; Item 6 at 2; Item 7 at 2; Item 8 at 4).

The amended SOR included the \$2,705 state tax lien entered against him in 2010 (SOR ¶ 1.d: Item 9); a \$923 state tax lien entered against him in 2016 (SOR ¶ 1.e: Item 10); a \$5,141 state tax lien entered against him in 2019 (SOR ¶ 1.f: Item 11); a \$2,060 state tax lien entered against him in 2022 (SOR ¶ 1.g: Item 12); a \$391 charged-off credit card account (SOR ¶ 1.h: Item 8 at 3); and a \$447 delinquent credit card account that was placed for collection. (SOR ¶ 1.i: Item 8 at 4).

In his response to the SOR, Applicant admits to all of the allegations in the original SOR. He did not response to the Motion to Amend the SOR which was incorporated in his FORM. His non-response will be treated as a denial for SOR ¶¶ 1.d – 1.i. Applicant indicated that he had filed his Federal and state income tax returns for tax years 2020 and 2021. He did not provide copies of either return or proof that they were received by the Internal Revenue Service (IRS). (Item 3) Applicant did not provide evidence that he resolved or is resolving the debts alleged in the SOR and the amended SOR.

In response to interrogatories, Applicant indicated that he was having difficulty filing his income tax returns online. They kept getting rejected. Applicant's car broke down. He has been using public transportation and ride shares in order to save money. (Item 5 at 6)

As of January 2022, Applicant's monthly income was approximately \$2,487. His monthly expenses was approximately \$1,815. He had approximately \$611 left over each month after expenses. (Item 5 at 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." (*Egan* 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." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

## **Analysis**

### **Guideline F: Financial Considerations**

The 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. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case 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.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's delinquent debts alleged in SOR ¶¶ 1.c – 1.i. The total approximate balance of the delinquent debt is \$17,741. Of that amount, Applicant owes a total of \$10,831 in tax liens to the state department of revenue, and \$6,901 in consumer debt. AG ¶ 19(f) applies to Applicant's failure to timely file his federal and state income tax returns for tax years 2020 and 2021 as alleged in SOR ¶¶ 1.a – 1.b.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 in 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(b) applies, in part. At some point, Applicant's car broke down, which is a circumstance beyond his control. However, the mitigating condition is given less weight because I cannot conclude he acted responsibly under the circumstances because he failed to show any attempt to resolve his delinquent debts.

None of the other mitigating conditions apply because Applicant's financial problems are ongoing. He failed to initiate a good-faith effort to resolve his debts. He has not provided documentation that he filed his 2020 and 2021 federal and state tax returns.

Overall, he failed to meet his burden of proof to mitigate the concerns raised under Financial Considerations.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). I considered Applicant is attempting to save money after his car broke down by taking taxis and ride share. I considered that Applicant mentioned in his response to the SOR that he filed the federal and state income tax returns for tax years 2020 and 2021. However, he did not provide copies of these tax returns. The amended SOR revealed he owes over \$10,000 in state income tax liens for tax years 2010, 2016, 2019 and 2022 and over \$6,900 in delinquent consumer accounts. He failed to show that he made any attempts to resolve his delinquent accounts. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised under financial considerations.

## **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                   AGAINST APPLICANT

Subparagraphs 1.a – 1.i:                   Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is denied.

Erin C. Hogan  
Administrative Judge