



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 23-01407  
 )  
 Applicant for Security Clearance )

**Appearances**

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

02/29/2024

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**Decision**

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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 (SCA) on July 19, 2021. On August 16, 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 (Financial Considerations). The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the

Government's written case on October 2, 2023. On October 4, 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 October 11, 2023, and did not respond. The case was assigned to me on January 31, 2024.

### **Evidentiary Issue**

The FORM included summaries of two personal subject interviews conducted on February 23, 2021, and August 12, 2021. The summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions, or updates; or object to consideration of the summaries on the ground that they were not authenticated. I conclude that he waived any objections to the summaries 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**

The SOR alleges that Applicant failed to file federal income tax returns for "at least 2014, 2015, and 2016" (SOR ¶ 1.a); that he failed to file state income tax returns for 2014, 2015, and 2018 (SOR ¶ 1.b); and that he was indebted to the federal government in the amount of \$445.43 for tax year 2017 (SOR ¶ 1.c). In Applicant's answer to the SOR, he admitted all the allegations in SOR. His admissions are incorporated in my findings of fact.

Applicant is a 52-year-old senior systems administrator employed by federal contractors since February 2021. He was employed by non-federal employers from October 2011 to February 2021, with periods of unemployment from December 2012 to April 2013, June to July 2014, and April to June 2016. He was employed by federal contractors from December 2009 to October 2011. He was cleared for a public trust position in March 2021.

Applicant married in March 1995 and divorced in July 2011. He has three adult children. He attended a technical school from May to October 2001 and a community college from September 2000 to May 2004 but did not receive a degree.

In Applicant's answer to the SOR, he admitted that he failed to file his federal income tax returns for 2014, 2015, and 2016; that he failed to file his state income tax returns for 2014, 2015, and 2018; and that he owes federal income taxes in the amount of \$445 for tax year 2017. He explained that he assumed responsibility for some large debts and child-support payments after he divorced. He stated that he is working with a financial advisor to resolve his tax problems and assist him with general financial management.

When Applicant was interviewed by a security investigator in February 2021, he admitted that he was notified by the IRS and state tax authorities about his unpaid taxes on dates that he could not recall, but he did not have the money to pay them. (FORM Item 3 at 2) In a follow-up interview in August 2021, he told the investigator that in 2020, he filed his federal and state returns for all years except 2014 and 2015, because he had investment income for those two years and did not know how to report it correctly. He also told the investigator that he had contacted the IRS and state tax authority and made payment plans for his federal and state tax debts, but that he was furloughed before he could make the first payments. (FORM Item 4 at 2)

In response to interrogatories from DCSA CAS in April 2023, Applicant submitted federal tax transcripts and state tax records reflecting that no federal or state returns were filed for tax years 2014 and 2015; that a state return for 2016 was filed in March 2021; that federal and state returns for 2017 were filed in March 2021; that a federal return for 2018 was filed in September 2019; and that federal and state returns for 2019 were filed in March and April 2021. He submitted a federal wage and income transcript for 2016 but did not submit any evidence that the 2016 federal income tax return was filed. The federal tax transcript for 2017 reflected unpaid taxes in the amount of \$445.43. (FORM Item 5) He submitted no evidence that the state income tax returns for 2014, 2015, and 2018 were filed and no evidence that the federal tax debt was paid.

### **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 in the record 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 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(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;

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 file federal and state income tax returns are recent, numerous, and did not occur under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's periods of unemployment and his divorce were conditions largely beyond his control and may have contributed to his

inability to pay the taxes due, but they did not affect his ability to timely file his federal and state tax returns.

AG ¶¶ 20(c), 20(d), and 20(g) are not established. Applicant stated that he was working with a financial advisor, but he submitted no documentary evidence of any actions to file the federal past-due tax returns for 2014, 2015, and 2016, or the past-due state tax returns for 2014, 2015, and 2018, and no evidence of actions to resolve the federal tax debt.

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002).

A security clearance adjudication is not directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

### **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). 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 repeated failure to timely file federal and state income tax returns and his failure to take meaningful steps to address his federal tax debt.

### **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.c:

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.

LeRoy F. Foreman  
Administrative Judge