



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-01602
)
 Applicant for Security Clearance)

Appearances

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

02/29/2024

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 (SCA) on August 3, 2022. On August 21, 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 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 on September 5, 2023, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 11, 2023. On the same day, she sent Applicant a complete copy

of the file of relevant material (FORM) and gave him an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 17, 2023, and did not respond. The case was assigned to me on January 31, 2024.

Evidentiary Issue

The FORM included summaries of several personal subject interviews conducted between September 21, 2022, and October 31, 2022. 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 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 is indebted to the federal government in the amount of \$188,755 for tax years 2004 through 2007. In Applicant's answer to the SOR, he admitted the allegation. His admission is incorporated in my findings of fact.

Applicant is a 59-year-old systems integration consultant employed by a federal contractor since June 2021. He has worked for federal contractors since March 2000. He served on active duty in the U.S. Army from January 1994 to January 1997 and in the Army National Guard from January 1997 to September 2005, and he received honorable discharges. His July 2010 SCA reflects that he received a DOD security clearance in 1994, and a clearance from another government agency in March 1999.

Applicant married in 1987. He and his wife have three children, born in 1992, 1991, and 1988. The two oldest children have passed away. He attended a community college from September 1991 to June 1993 but did not receive a degree.

In Applicant's August 2022 SCA, he disclosed that he owed about \$120,000 in federal income taxes. He explained that he was unable to pay the taxes because his wife lost her job, and he incurred medical bills and legal expenses in 2004, after his son was involved in an accident. In 2005, he received a Chapter 7 bankruptcy discharge that included the medical bills and legal expenses from his son's accident. (FORM Item 4 at 52-54) When he was interviewed by a security investigator in September 2022, he stated that he was discussing his tax debt with the IRS and making monthly \$500 payments to the IRS, using his wife's retirement fund. (FORM Item 6 at 4-5)

In response to DOHA interrogatories in August 2023, Applicant reported that he and his wife owed federal taxes for every year from 2004 to 2022, except for 2013, 2014,

and 2015. (FORM Item 8 at 2) They submitted a personal financial statement reflecting net monthly income of \$17,052; expenses of \$18,758; and monthly payments of \$1,145 on a personal loan, leaving a net monthly shortfall of about \$2,851. (FORM Item 8 at 8) Their personal financial statement reflects \$4,000 per month for groceries and \$8,799 for utilities. These unusually high expense items are not explained.

Over the years, Applicant has set up several installment plans for his tax debt, but they were cancelled when he did not pay his income taxes for the following year. (FORM Item 7 at 8) The payment plan mentioned by Applicant during his security interview in September 2022 apparently is no longer in effect. In a May 2023 letter to the IRS, Applicant attributed their inability to pay the taxes due to a substantial increase in their wages in 2015. (FORM Item 7 at 8) However, his responses to DOHA interrogatories reflected that his tax debts began accumulating in 2004. (FORM Item 8) He received a Chapter 7 bankruptcy discharge in 2005 that relieved him of the expenses related to his son's accident and the reduction in family income when his wife retired. However, his federal tax debt continued to increase. He presented no evidence of a current plan to resolve his tax debt.

The SOR alleges that Applicant owes \$188,755 for tax years 2004 through 2017. The basis for that calculation is not clear from the record. Applicant's response to DOHA interrogatories indicated that his tax debts for 2004 through 2012 totaled about \$40,921. (FORM Item 8 at 2) His tax transcripts reflect a debt of \$71,361 for 2013; \$21,937 for 2014; and \$8,027 for 2015. (FORM Item 8 at 9-16) He submitted wage and income transcripts for 2016 and 2017 but did not submit tax transcripts for those two years. However, he admitted in his response to DOHA interrogatories that his federal tax debt is about \$140,000. (FORM Item 8 at 3) His admission is sufficient to establish a tax debt of that amount.

Applicant's tax transcripts reflect that a significant portion of his tax debt is for late filing and underreporting his income. For tax year 2013, he incurred penalties of \$4,491 and \$3,245 for late filing, an accuracy-related penalty of \$2,596, and an additional tax of \$13,412 assessed. For 2014, he incurred an accuracy-related penalty of \$2,327; an additional tax assessment of \$11,658; and interest of \$664 on a late payment. For 2014, an additional tax of \$4,906 was assessed, and he was charged \$405 for late payment.

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 admission and the record evidence 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 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 tax debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. The legal and medical expenses that Applicant incurred after his son's accident were conditions beyond his control, but those debts were discharged in his Chapter 7 bankruptcy. He submitted no evidence that his ongoing tax debts are due to conditions largely beyond his control. The evidence reflects that he has not adjusted his tax payments to his income and has not adhered to previous installment plans for unpaid taxes.

AG ¶¶ 20(c), 20(d), and 20(g) are not established. Applicant has not complied with previous installment plans, and he presented no evidence of a current installment plan for his unpaid taxes.

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 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

Subparagraph 1.a: Against Applicant

Conclusion

I conclude that it is 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