



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01186
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany C. M. White, Esq., Department Counsel  
For Applicant: *Pro se*

04/17/2024

**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 on November 2, 2021. On August 16, 2023, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 August 17, 2023, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 9, 2024. On January 10, 2024, 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 January 23, 2024, and did not submit any additional information. The case was assigned to me on April 2, 2024.

The SOR (FORM Item 1) and Applicant's answer (FORM Item 2) are the pleadings in the case. The government's evidence is contained in FORM Items 3 through 10, which are admitted in evidence.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b, 1.e, 1.h, 1.i, and 1.j. He denied the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.g. His admissions are incorporated in my findings of fact.

Applicant is a 71-year-old, self-employed, owner-operator of a truck leased to a defense contractor since April 2019. He attended college from January 1972 to June 1973 but did not receive a degree. He married in April 1972, divorced in April 1976, and remarried in May 1976, and has two adult children. He underwent a background investigation by another government agency in November 2011 and was cleared to transport explosives, but he has never held a security clearance.

The SOR alleges eight delinquent consumer debts reflected in credit reports from January 2022, August 2022, April 2023, and January 2024 (SOR ¶¶ 1.a-1.h). It also alleges failure to timely file federal income tax returns for tax years 2017 through 2022 (SOR ¶ 1.i) and a federal tax debt of \$29,985 (SOR ¶ 1.j).

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: delinquent vehicle loan placed for collection of \$17,460.** Applicant denied this debt. The last payment on this debt was in August 2020. It was charged off in October 2020. (FORM Item 10 at 4) In Applicant's answer to the SOR, he stated that he has never purchased a vehicle from this company. However, he stated that he would contact the creditor to make payment arrangements after he pays his credit-card debts. He submitted no documentary evidence of contact with the creditor and no documentary evidence that he has disputed the debt with the original creditor, collection agency, or credit bureau. The debt is not resolved.

**SOR ¶ 1.b: delinquent credit-card account placed for collection of \$8,748.** Applicant admitted this debt. He submitted no evidence showing why the debt became delinquent. The account was opened in July 2014 and charged off in November 2020. (FORM Item 10 at 5) In January 2023, the creditor agreed to settle the debt for \$6,862, and Applicant agreed to a payment plan providing for monthly \$561 payments. He made the monthly payments until June 2023. He did not make any further payments after he broke his hip in July 2023. In his Answer to SOR, he stated that his expected to return to

work in October 2023. Because he did not respond to the FORM, the record does not reflect his current medical status and whether he resumed payments.

**SOR ¶ 1.c: delinquent credit-card account placed for collection of \$1,981.** Applicant denied this debt. The last payment on this account was in April 2020. It was charged off in June 2020. (GX 10 at 12) It is not resolved.

**SOR ¶ 1.d: medical bill placed for collection of \$1,515.** Applicant denied this debt. It is reflected in the credit report from April 2023. (FORM Item 9 at 3) In Applicant's answer to the SOR, he denied this allegation and stated that he did not remember a medical account in collection for this amount. He submitted no evidence that he disputed the debt with the original creditor, the collection agency, or the credit bureau. It is not resolved.

**SOR ¶ 1.e: delinquent credit-card account placed for collection of \$1,464.** Applicant admitted this debt. It was placed for collection in May 2020. (FORM Item 10 at 7) It is not resolved.

**SOR ¶ 1.f: delinquent credit-card account placed for collection of \$1,195.** Applicant denied this debt. This account was opened in May 2020 and charged off in August 2020. It is not resolved. (FORM Item 10 at 10)

**SOR ¶ 1.g: delinquent payday loan placed for collection of \$1,118.** Applicant denied this debt, stating that he has never borrowed money from this lender. The collection account was opened in January 2023. (FORM Item 10 at 6) He submitted no evidence that he disputed this debt with the original creditor, the collection agency, or the credit bureau. It is not resolved.

**SOR ¶ 1.h: delinquent telecommunication account placed for collection of \$221.** Applicant admitted this debt. In his answer to the SOR, he stated that he purchased a cellphone and returned it on the same day. He submitted no evidence that he disputed the debt with the creditor, the collection agency, or the credit bureau. The April 2023 credit report reflects that it was placed for collection in April 2023. (FORM Item 9 at 3) It is not resolved.

**SOR ¶ 1.i: failure to timely file federal income tax returns for tax years 2017 through 2022.** Applicant admitted this allegation. He submitted no evidence explaining why he did not file his tax returns on time as required. He submitted evidence that he filed his 2017 return in March 2019, his 2018 return in March 2022, his 2019 return in February 2022, his 2020 return in October 2022, and his 2021 return in March 2023. In his answer to the SOR, he stated that he planned to file his federal tax return for 2022, but his plan was delayed by his wife's surgery after she lost use of her right arm. Because he did not respond to the FORM, I am unable to determine whether he has filed the 2022 return.

**SOR ¶ 1.j: federal tax debt of \$19,985.** Applicant admitted this debt. He submitted no evidence explaining why he did not timely pay the taxes due. He stated that he was

making payments on this debt until July 2023 when he broke his hip. He stated that he expected to return to work in October 2023. In response to DOHA interrogatories in June 2023 (FORM Item 5), he submitted evidence of the following payments:

- July 2020 payment of \$1,000 for tax year 2017
- December 2020 payment of \$1,000 for tax year 2017
- February 2021 payment of \$1,000 for tax year 2017
- April 2021 payment of \$712 for tax year 2015
- April 2021 payment of \$1,524 for tax year 2016
- September 2021 payment of \$1,181 for tax year 2017
- February 2022 payment of \$2,587 for tax year 2020
- March 2022 payment of \$731 for tax year 2015
- March 2022 payment of \$2,000 for tax year 2019
- April 2022 payment of \$2,000 for tax year 2018

Because Applicant did not respond to the FORM, the record does not reflect whether he made any payments after April 2022. The debt is not yet resolved.

In response to DOHA interrogatories in January 2023, Applicant submitted a personal financial statement reflecting monthly net income of \$17,243; his wife's income of \$870; monthly expenses of \$5,295; debt payments of \$5,439; and a net monthly remainder of \$7,379. (FORM Item 4 at 11)

### **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* 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* 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 FORM 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;

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's recent incapacitation and his wife's medical problems were conditions largely beyond his control, but they occurred after the debts became delinquent. He submitted no evidence of the reasons for his failure to timely file his tax returns or pay the taxes due. His incapacitation is relevant to his inability to continue making payments on his tax debt and to comply with the settlement agreement for the delinquent debt alleged in SOR ¶ 1.b. Because he did not respond to the FORM, I am unable to determine if he has resumed the payments on either debt.

AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.a and 1.c through 1.h, which are not resolved. It is partially established for the debt alleged in SOR ¶ 1.b, on which he was making payments until he was injured in July 2023. He submitted no evidence of payments after July 2023.

AG ¶ 20(e) is not established. Applicant denied the debts alleged in SOR ¶ 1.a, 1.c, 1.d, 1.f, and 1.g, but he submitted no documentary evidence showing that he contested those debts with the original creditor, the collection agencies, or the credit bureaus.

AG ¶ 20(g) is partially established for the failure to timely file federal tax returns alleged in SOR ¶ 1.i and federal tax debt alleged in SOR ¶ 1.j. Applicant started filing his past-due tax returns in March 2019, and he began making payments on his tax debt in July 2020, before he submitted his SCA in November 2021. He submitted no evidence that he notified the IRS of his incapacity in July 2023. Because he did not respond to the FORM, I am unable to determine if he filed his return for 2022 or made any payments on his tax debt after April 2022.

### **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 his delinquent consumer debts, tax debt, and failure to timely file his federal 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.j:

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