



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



In the matter of:)
)
) ISCR Case No. 22-00705
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Allen V. Edmunds, Esq.

04/03/2024

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 July 28, 2020. On September 15, 2022, 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 original SOR on September 24, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 8, 2022. On November 8, 2022, DoD issued an amendment to the SOR. Applicant answered the amendment on November 22, 2022. The case was assigned to

me on May 12, 2023. On May 30, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 5, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. At the hearing he offered Applicant Exhibits (AE) A through T, which were admitted without objection. DOHA received the transcript (Tr.) on July 15, 2023.

On January 10, 2024, I issued a decision denying Applicant's eligibility for a security clearance. Applicant appealed. On March 26, 2024, the Appeal Board remanded the case back to me to address whether I had considered timely submitted post-hearing documentary evidence, and it directed a new decision. Consistent with my initial order leaving the record open and subsequent extension requested by Applicant's counsel, Applicant timely submitted AE U-Z by email on July 28, 2023. (Tr. at 102; HE VI.) I reviewed the exhibits; acknowledged receipt of the exhibits on July 31, 2023, by email; and filed them in the digital case folder I had established for this case. (HE VI.) I would note AE W is a duplicate of AE T. AE U through Z are admitted without objection.

Findings of Fact

In Applicant's Answer to the SOR, he admitted to the allegations SOR ¶¶ 1.a-1.f, 1.h, 1.i-1.m, and 1.o with clarification and denied SOR ¶¶ 1.g, 1.i-1.k, 1.n, and 1.p with clarification. His admissions are incorporated into the findings of fact.

Applicant is a 55-year-old retired Army veteran. He was honorably discharged in 2006. He has been married five times and has three adult children. His divorces occurred in 1993, 1999, 2001, 2013, and 2020. He was required to pay \$571.76 in monthly alimony to his fourth wife through November 2022. (Tr. at 43-44.) He earned his bachelor's degree in 2013 and his master's degree in 2015. He has worked for a Federal contractor since 2010. He also worked as an independent contractor from October 2010 to October 2014. (Tr. at 46.) He has been in his current position since May 2022. He has experienced brief periods of unemployment when he was between contracts and after retiring from the military. (Tr. at 45-46.) The largest period of unemployment for him was three months in 2015. (Tr. at 29; GE 1.) His most recent security clearance was granted in 2017. (GE 1; Tr. at 47.)

SOR ¶¶ 1.a and 1.b-1.e: A June 2018 tax lien by the Federal government for \$166,567.00 for tax years 2010 through 2016 and delinquent tax debt to the Federal Government for tax years 2017 through 2020 in the amounts of \$8,947, \$11,287, \$7,311, and \$10,063 respectively that remains unpaid. Applicant in his security clearance application admitted that his taxes were delinquent for tax years 2013 through 2018. He cited being unable to obtain the appropriate records and that this was during the period he was an independent contractor. (GE 1; Tr. at 48-49.) He did not discover the problem until he switched his limited liability company (LLC) from a 1099 payment to a W-2. He could not tell "exactly what documents" he was told he was missing at the time. (Tr. at 49.) He explained he was "just relying on whoever filed [his] taxes at the time" and what they told him for why he did not adjust his tax withholdings. (Tr. at 52.) He went to a

tax lawyer to try to get back on track. He testified “I haven't made any federal payments since I want to say 2014, whenever I started with [first tax relief company] (TRC1).” (Tr. at 56.) He has been working with the second tax relief company (TRC2) since April 2019. (Tr. at 53; AE A.) TRC2 stated it was “legal representing” him with regards to SOR ¶¶ 1.a-1.e. He acknowledged his security clearance was in jeopardy, which was why he retained the tax relief company to assist him in getting his tax debt down. He did not think it was in his best interest to talk to the IRS himself. He testified he was told by his tax relief company “the best way forward is to let them negotiate the monies owed” but added “With me doing it on my own I'll probably get the same results that they would get.” (Tr. at 57.) He offered AE X dated June 30, 2023, from TRC3, which announced TRC3's services had been retained for resolution of IRS tax liabilities. TRC3 stated:

We are currently in the process of settling their tax debt and resolving all tax matters with the IRS. Please note that [Applicant] is/ are currently in the process of compliance with all IRS filing and compliance requirements. All collection efforts have been placed on hold due to the pending resolutions.

SOR ¶ 1.f: delinquent state tax debt for tax years 2018 and 2020 in the amount of \$9,682. Applicant admitted this debt. He testified his wages were garnished for his delinquent state taxes in August 2020, but he was not sure what tax years the garnishment covered. (Tr. 56, 58.) The state tax returns that he provided with his supplemental interrogatory responses indicated he owed state taxes in the amount of \$8,587 for tax year 2018 and \$1,095 for tax year 2020. (Tr. at 58.) He testified TRC2 was representing him with regards to SOR ¶ 1.f and was also negotiating a resolution to the state delinquency. (Tr. at 60; AE A.) TRC2's letter was issued prior to the SOR amendments. He offered a payment plan reminder notice from a different company dated July 12, 2023, stating:

You have received this payment reminder notice to assist you with your payment plan related to your debt due for the creditor(s) referenced in the detail section. We have provided a mailing coupon at the bottom of this notice along with a payment remittance envelope. Please detach the payment coupon and mail it on or before 08-01-23 with your scheduled payment in the amount of \$478.84. (AE Y.)

The reminder notice showed the respective balances due to his state Department of Taxation as \$3,661.65 and \$1,605.56 but does not state the tax years applicable to these amounts.

Applicant sought the assistance from two debt-relief companies to address his consumer debt. He enrolled with his current company on April 21, 2022, and the debt-relief company reported he had a total debt of \$60,899 enrolled. He has been making \$862 monthly payments to this debt-relief company. (AE C.) He provided exhibits showing that he had addressed and resolved debts alleged in SOR ¶¶ 1.g, 1.i, 1.j, 1.k, 1.n, and 1.p, and he testified to the unresolved debts in SOR ¶¶ 1.h, 1.l, and 1.m, which became

delinquent between 2018 and 2019 during the breakup of his fifth marriage. (Tr. at 61-62; GE 8; GE 9.)

SOR ¶ 1.g: an unpaid November 2017 judgment in the amount of \$773. Applicant admitted this debt, which arose due to his divorce, when he was not able to pay all of his bills at the time. He provided documentation the debt had been resolved by “payment of garnishment” on April 8, 2019. (Tr. at 33; AE B.) This debt is resolved.

SOR ¶ 1.h: past-due account referred for collection for \$878. Applicant in his Answer admitted responsibility for this debt. The first date of delinquency was December 2018, and it was assigned June 2020. He stated the debt was part of a payment through the debt relief company. This debt is not resolved. (Tr. at 35; GE 8 at 2; AE C.)

SOR ¶ 1.i: past-due account referred for collection for \$145. Applicant admitted this debt and provided documentation dated October 4, 2022, that the debt had been paid in full. (Tr. at 35; AE D; AE T; AE W.) This debt is resolved.

SOR ¶ 1.j: past-due account referred for collection for \$397. Applicant admitted this debt. He had overlooked the debt and was not aware of it because it did not show on his credit report. When he got the notification from the Government, he resolved it. (Tr. at 36.) He provided documentation the debt had been resolved. (AE E.)

SOR ¶ 1.k: past-due cellular account charged off for \$131. Applicant admitted this debt and provided documentation the debt had been resolved “as a paid collection account.” (Tr. at 37; AE F.) This debt is resolved.

SOR ¶ 1.l: indebted to a bank for an account that has been charged off in the amount of \$3,138. Applicant admitted the debt. He stated the was enrolled with the debt relief company. The debt arose from a joint account in one of his previous marriages, and he was disputing it. The first “major” delinquency was reported in March 2018. The credit report states the account was previously in dispute and that the dispute had been resolved by the data furnisher. (Tr. at 37; GE 9 at 6; AE C.)

SOR ¶ 1.m: delinquent automobile loan that has been charged off in the amount of \$39,882. Applicant admits the debt. He stated the debt was for a joint car loan he had with one of his former spouses. He voluntarily turned the vehicle in because he could not afford the vehicle. He listed the debt with the debt relief company and is currently negotiating to get a payoff with the creditor. The debt was charged off in August 2021. The first “major” delinquency was reported in November 2019. (Tr. at 38; GE 9 at 8; AE C; AE T; AE W.)

SOR ¶ 1.n: indebted to a bank for an account that has been charged off in the amount of \$2,194. Applicant admits the debt, which arose from a joint account with one of his former spouses. He provided documentation the debt had been resolved on October 5, 2022. (Tr. at 38-39; AE G.) This debt is resolved.

SOR ¶ 1.o: indebted to a retailer for an account that has been charged off in the amount of \$8,035. Applicant admits this debt. He stated the debt is over ten years old. He testified he has on several occasions, contacted the retailer who cannot find the debt. It is not on any of the credit reports he has requested. He stated he would enroll the debt with the debt relief company if the debt can be located. (Tr. at 39-40; GE 6 at 9; AEs J-L.)

SOR ¶ 1.p: financial account that has been placed for collection in the amount of \$9,653. Applicant denies the debt. He cannot recall what it is from. He stated he had enrolled the debt with the debt relief company. There is a debt of the same amount settled for \$2,896 in October 2022 by the debt relief company. (Tr. at 40; GE 6 at 6; AE C at 4, 6; AE T; AE W.) This debt is resolved.

Applicant testified “the best way forward” was for him to stick with the payment plan with the debt-relief company to resolve his debts. He testified that the first part of being enrolling in the debt-relief program was to undergo financial counselling and prepare a budget. He said the enrollment and counseling occurred in 2020. (Tr. at 70-71.)

Applicant draws a salary totaling about \$155,000 a year, military retired pay totaling roughly \$17,000 a year, and veteran’s disability payments totaling about \$6,000 a year. (Tr. at 41.) He was married to his fourth wife from 2003 to 2013 when many of the debts were incurred. He paid monthly alimony of \$571.76 to his fourth spouse until November 2022. (Tr. at 43-44.) His fifth divorce was finalized in January 2020. He and his fifth spouse had married in 2016 and separated in 2018. (Tr. at 44-45.)

Applicant denies any of his financial issues, tax debts, or delinquent accounts arose from overspending and living beyond his means. (Tr. at 52.) He owns a 2013 motorhome purchased in 2022, which has a monthly payment of \$1,515. His August 2022 credit report shows he has a vehicle with a loan balance of \$56,170 and a monthly payment of \$1,179, and a motorcycle with a loan balance of \$5,604 and a \$676 monthly payment, which he testified was now \$659. (Tr. at 84-85; GE 9 at 5-6.)

Applicant acknowledged the debts set forth in SOR ¶¶ 1.a, 1.f, and 1.n were included on a previous SOR ten years ago. (Tr. at 85.) He included as a post-hearing submission “2016 Statement of Reasons with Response and Exhibits,” which showed his compliance with payment plans for Federal and state tax years not alleged and confirmation of payments to the IRS and his state’s Department of Taxation. (AE Z.)

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 documentary evidence admitted into 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 under AG ¶ 20 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; and

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 partially established. Applicant's \$166,567 Federal tax lien for tax years 2010 through 2016 and state tax debt of \$9,682 for tax years 2018 and 2020 are unresolved, which casts doubt on his current reliability, trustworthiness, and good judgment and he was placed on notice of these concerns ten years ago in a previous SOR. He presented evidence that he resolved six accounts totaling nearly \$13,300, which included an account in the amount of \$9,653 and five other accounts totaling \$3,640 and had been working with a debt relief company on one not resolved

AG ¶ 20(b) is partially established. Applicant did experience multiple divorces in the last ten years. He does support his testimony that he paid certain debts and has offered to resolve others. AG ¶ 20(b) requires that "the individual acted responsibly under the circumstances." He has not made any payments or engaged the IRS regarding his delinquent taxes since 2014. His intentions to resolve financial problems, specifically his tax debts, in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). There have been no direct payments made towards four consumer accounts totaling nearly \$52,000.

AG ¶ 20(c) is not fully established. Applicant testified he received financial counseling for his financial problems when he enrolled his debts with the debt relief company. He did not offer any documentation of his successful completion of these courses from a legitimate and credible source. The record does reflect that the consumer debt problem is being resolved by his employment of a debt relief company and there is evidence of his timely monthly payments on his motor home, vehicle loan, and motorcycle loan.

AG ¶ 20(d) is not established. Applicant has a \$166,567 tax lien for delinquent taxes from 2010 through 2016. He owes delinquent Federal taxes totaling \$37,608 for tax years 2017 through 2020. He owes delinquent state taxes totaling \$9,682 for tax years 2018 and 2020. He has failed to pay his taxes as required from 2010 to 2020 and amassed delinquent taxes totaling nearly \$214,000. Aside from garnishment, he provided evidence of one payment, which pertained to his state tax debt, otherwise he has not made any payments on his delinquent taxes alleged in the SOR. While there is some evidence he has made arrangements regarding paying his state tax debt, the evidence is insufficient regarding his compliance with those arrangements. He blames inadvertent mistakes on his tax returns while operating as an independent contractor for a few years before becoming a salaried employee does not address the number of years in question. He has not initiated a payment plan with the IRS and has been relying on tax relief firms to try and negotiate a settlement. After eight years of working with different tax relief firms he has not resolved any delinquent tax account. See, e.g., ISCR Case No.12-01664 at 3

(App. Bd. Jan. 17, 2014). 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). AG ¶ 20(g) is not established.

Applicant purchased a motorhome, a luxury brand vehicle, and a motorcycle, while having extensive tax debts and other delinquent financial obligations. Applicant’s circumstances and luxury purchases while having numerous unresolved financial concerns raise serious reservations about his judgment and reliability, concerns which cannot be successfully mitigated by the debts he has already mitigated.

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.

Applicant was evasive in his testimony. While he had a distinguished military career and letters attesting to his character, after weighing the disqualifying and mitigating conditions under Guidelines F and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns about his financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

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

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

Subparagraphs 1.g, 1.i, 1.j, 1.k, 1.n, and 1.p: For Applicant
Subparagraphs 1.h, 1.l, 1.m, and 1.o: 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.

Charles C. Hale
Administrative Judge