



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



In the matter of:)
)
) ISCR Case No. 22-02168
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
John B. Renehan, Esq., Department Counsel
For Applicant Carl Marrone, Esq.

09/05/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 26, 2021. On December 23, 2023, 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 SOR on May 18, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 15, 2023, and the case was assigned to me on January 3, 2024. On January 24, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 20, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, presented witness testimony, and offered Applicant Exhibits (AE) A through DD, which were admitted without objection. DOHA received the transcript (Tr.) on March 29, 2024. The

record remained open after the hearing and Applicant timely submitted AE EE and AE FF on April 15, 2024, which were admitted without objection. (Tr. at 122.)

Findings of Fact

In Applicant's Answer he admitted, with explanations, SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, and 1.i. He denied, with explanations, SOR ¶¶ 1.c, 1.f, 1.h, and 1.j. The SOR was amended on March 20, 2024, adding SOR ¶¶ 1.k and 1.l, which Applicant did not object to. (HE II-IV; Tr. at 8-9.) Applicant denied SOR ¶¶ 1.k and 1.l, with explanations. His admissions are included in my findings of fact.

Applicant is a 37-year-old information technology (IT) consultant. He has worked for his sponsor since 2017. He has held a security clearance since 2007. (GE 1; GE 3 at 32; GE 5 at 2; Tr. at 24.) He holds various IT certifications and has taken college courses but holds no degree. (GE 1; Tr. at 61.) He married in November 2017 and divorced in January 2019 and has two children. (GE 1; Tr. at 61.) When Applicant submitted his SCA, he disclosed that he failed pay the taxes due. He stated he was on a payment plan for his delinquent Federal and state tax debts listed on the SOR. (Tr. 49, 50, 53, 53-54, and 54, 55-56; GE 1.)

From 2010 until 2014, Applicant earned \$70,000 a year before being laid off. (GE 1; Tr. at 25.) He found employment after about six months. He took a position paying \$75,000 a year in March 2015, where he worked for about a year. (GE 1; Tr. at 28-29.) He left in February 2016 for a higher paying position, which paid \$100,000 a year. He left after year because of poor performance (GE 1 at 17-18; Tr. at 30-31.) These companies issued him a W-2 for his work. He was unemployed from February 2017 until September 2017, when he became employed by his sponsor. His annual salary in his current position is \$170,000. He received a Form 1099 for his compensation from his current employer. (GE 1; Tr. at 34-36.)

Applicant testified he does not have any additional delinquent tax bills not covered by his plans. (Tr. at 66-67.)

Applicant failed to timely pay Federal and state income tax returns for at least tax years 2011 and 2015 through 2020 (SOR ¶¶ 1.a and 1.b). He admits these allegations. He states that he was unable to initially pay the amounts due upon filing due to periods of unemployment between October 2014 and March 2015 and between February 2017 and September 2017. In his SCA he attributed his financial problems to periods of unemployment that got him behind, needing the money to help with family, and that he was working to catch up paying his bills. (Answer; AE D; GE 1 at 46-49; Tr. at 69-78; GE 2 at 8.) He testified that he was not overwhelmed with anything. He acknowledged not having sufficient funds withheld for tax purposes or failing to keep sufficient funds until the end of the year. He stated the additional funds were "just a way to help me at that current moment as far as just life expenses." (Tr. at 66.)

Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$10,000 for tax year 2011 (SOR ¶ 1.c); in the amount of \$5,427 for tax year 2018 (SOR

¶ 1.f); in the amount of \$21,291 for tax year 2019 (SOR ¶ 1.h); and in the amount of \$20,140 for tax year 2020 (SOR ¶ 1.j). He testified he believed he had resolved the 2011 debt, which was the basis for his denial. (Answer; GE 1 at 46; Tr. at 68-69.) In his Answer and testimony, he explained he entered into a payment plan with the IRS and had resolved tax year 2018. He cites the IRS website indicating he had fully satisfied the 2018 tax debt on December 19, 2022. (Answer; AE G, AE H; Tr. at 54.) The only remaining tax debts were for tax years 2019 and 2020. He testified he had entered into a payment plan with the IRS for all tax years with remaining balances for 2019 and 2020. He is required to make a \$700 monthly payment to the IRS for tax years 2019 (remaining balance \$19,141) and 2020, which has increased due to interests and penalties. (Answer; AE I, AE J, AE K; Tr. at 54-57.)

Applicant is indebted to his state for delinquent taxes in the amount of \$4,876.00 for tax year 2014 (SOR ¶ 1.d); in the amount of \$2,164 for tax year 2016 (SOR ¶ 1.e); in the amount of \$4,701 for tax year 2018 (SOR ¶ 1.g); and in the amount of \$4,463 for tax year 2019 (SOR ¶ 1.j). In his Answer and testimony for all of the state tax debts he explained he had entered into a payment plan with the state requiring a monthly payment of \$540.66. He pays \$600. As of January 2024, his balance is \$12,614.31. AE E showed the balance back in April 2023 at \$17,5058.76. He provided AE Y, which stated his payment agreement as of January 22, 2024, was active along with a screen shot of his monthly installment payment. He does not have a document establishing the plan, which he states goes back to 2020. (Answer; AE E, AE F; AE Y; Tr. at 59-60.)

Applicant failed to timely file his Federal and state income tax returns for tax years 2021 and 2022 (SOR ¶¶ 1.k and 1.l). He denies these allegations. (Tr. at 57-59, 93.) He explained that the IRS and state had received his tax returns but had not processed them. (AE B, AE C, AE U, AE Z; Tr. at 57-58; 77-78, 93.) He testified his tax preparer had received an acknowledgement that his 2021 and 2022 state returns had been accepted, but he had not provided that documentation. He provided his Federal 2022 tax return and IRS account transcripts. He filed for an extension for tax year 2021. (AE U, AE Z.) He testified he owes \$9,290 for 2021 and \$11,925 for 2022. (AE U; Tr. at 81.) These tax debts are not part of the installment agreement with the IRS or the state. (Tr. at 96.)

Applicant testified he used the money owed the IRS and state to meet other obligations. He stated "I can afford to pay it. As I said before, the extra money was used to help in my current situation." (Tr. at 107.) He cited "life expenses" for why he got behind on paying his tax debts. He stated "childcare, other obligations, other bills that I have" and when asked again for more detail he stated "all my other bills that I have currently open, sir. Credit cards, phone bills." He stated there were no other debts not already listed under monthly expenses on the April 2023 financial statement he provided. The net remainder on his financial statement was just over \$6,400. (AE L; Tr. at 115, 117.)

Applicant's installment agreements reflect he makes his payments on time. In response to whether he considered putting more money towards his tax debts he stated, "That's what I do. So normally, I'll just save the money, and then that's where a lot of my lump sums will come from." The transcripts provided in GE 2 reflect random lump sum payments, in addition to his regular installment payments. He has never participated in

financial counseling. He is current on the debt he listed in AE L, and a March 18, 2024 credit report reflects he is in good standing for his other accounts. (AE L; AE AA; Tr. at 100, 117.)

Applicant provided three character statements and presented three witnesses who attested to his character and exceptional work performance. His character letters supported the testimony of his colleagues. (AE Q-R; Tr. 121-129, 130-136, 138-144.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(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.” The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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;

(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.

Applicant bears the burdens of production and persuasion in mitigation. The mere existence of a payment arrangement with an appropriate tax authority does not compel a favorable decision under Directive, Encl. 2, App. A ¶ 20(g). See, e.g., ISCR Case No. 17-01213 at 4 (App. Bd. Jun. 29, 2018). An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). As with the application of any mitigating condition, the judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See ISCR Case No. 17-01807 at 3 (App. Bd. Mar. 07, 2018).

AG ¶ 20(a) is not established. Applicant's delinquent tax debts were recent, frequent, and were incurred under circumstances making recurrence likely, as evidenced by him owing taxes in tax years 2021 and 2022.

AG ¶¶ 20(b), 20(d), and 20(g) are established for the Federal and state tax debts. Applicant provided supporting documentation to demonstrate his good-faith efforts to remedy his significant amount of outstanding taxes, and he is systematically paying his

Federal and state tax debts. There is sufficient evidence that he filed his 2021 and 2022 returns on time.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall common-sense judgment based upon careful consideration of the guidelines" and the whole-person concept." My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant provided strong character evidence. After weighing the disqualifying and mitigating conditions under Guideline 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 mitigated the security concerns raised by his Federal and state tax problems. Accordingly, I conclude he has 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

Formal findings For or Against Applicant 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:	FOR APPLICANT
Subparagraphs 1.a-1.l:	For 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 granted.

Charles C. Hale
Administrative Judge