



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



In the matter of:)
)
[Name Redacted]) ISCR Case No. 23-01258
)
Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq., Department Counsel
For Applicant: *Pro se*

08/14/2024

Decision

HOGAN, Erin C., Administrative Judge:

Applicant’s failure to timely file his federal income tax return for tax year 2018, and his failure to pay medical bills incurred for medical procedures received at an overseas base hospital while a DOD civilian employee raise questions about his trustworthiness and reliability. The security concerns raised under Guideline F, Financial Considerations, are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On August 4, 2021, Applicant completed and signed his Electronic Questionnaire for Investigations Processing (e-QIP). (Government Exhibit (GE) 1) On October 23, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations. On October 28, 2023, Applicant responded to the SOR and requested a hearing before an administrative judge. On November 29, 2023, Department Counsel was ready to proceed. The case was assigned to me on May 3, 2024. On May 10, 2024, DOHA issued a notice of hearing, setting the hearing for June 5, 2024. The hearing was held as scheduled via video-teleconference.

During the hearing, Department Counsel offered seven exhibits, which were marked as Government Exhibits (GE) 1-7 and admitted without objection. Applicant testified and offered no exhibits. Upon review of the SOR, I marked and admitted two exhibits attached to Applicant's Response to the SOR as Applicant Exhibits (AE) A and B. The record was held open to allow Applicant to submit additional documents. He timely submitted three exhibits which were admitted as AE C-E without objection. On June 14, 2024, DOHA received a transcript (Tr.) of the hearing. The record closed on July 11, 2024.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.c -1.f and denies the allegation in SOR ¶ 1.b. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 51-year-old employee of a defense contractor seeking to maintain a security clearance. He has worked for his current employer since August 2020. He previously worked for several defense contractors and as a DOD civilian employee. He has had a security clearance without incident since 2002. He served on active duty in the U.S. Army from April 14, 1998, to August 13, 2001, and active duty in the U.S. Air Force from January 7, 2002, to March 15, 2007. He separated from both services with an honorable discharge. He served three tours in Iraq, two tours on active duty and one tour as a civilian. He is a high school graduate and has some college credits. He is married to a German national and resides in Germany. They have three grown children. (Tr. 18-19, 21, 25-26; GE 1)

Financial Considerations

On August 4, 2021, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). The subsequent background investigation revealed Applicant had delinquent debts and federal tax issues. The SOR alleges the following debts: Applicant failed to file his Federal Income tax return for tax year 2018 (SOR ¶ 1.a: GE 1 at 83); a \$9,112 debt owed to the DPT Treasury that was placed for collection (SOR ¶ 1.b: GE 5 at 3; GE 6 at 2); a debt owed to the DPT Treasury in the amount of \$8,968 that was placed for collection (SOR ¶ 1.c: GE 6 at 2; GE 7 at 3); a \$1,939 debt owed to DLRFIRM for an account that was placed for collection by a German utility company (SOR ¶ 1.d: GE 5 at 3; GE 6 at 2); a \$469 debt owed to the DPT Treasury that was placed for

collection (SOR ¶ 1.e: GE 6 at 3; GE 7 at 4); and a debt owed to the DPT Treasury in the amount of \$48 that was placed for collection (SOR ¶ 1.e: GE 5 at 4; GE 6 at 3).

Applicant testified that he had 18 years of combined active-duty service in the U.S. Army and the U.S. Air Force. He worked as a civilian employee with the Department of Defense for 11 years. He states that he has had no security issues for over 20 years. He claims that his credit report does not affect him because he lives overseas. He admits that he needs to take care of a few small bills but does not believe it can be held against him. He is currently living on his disability pay from the U.S. Department of Veteran's Affairs (VA). In June 2024, the VA awarded him a 100 percent disability rating. He receives a \$3,946 a month from the VA. (Tr. 18-20; AE C at 3-5, 14-16)

Applicant lives overseas with his wife and his adult daughter who has special needs. His wife is a German citizen. In the area where they live, the better paying jobs are contracting jobs with the Department of Defense. These jobs require a security clearance. If he gets his security clearance, he will be able to work for a defense contractor. He will then be able to use his VA disability payments to resolve his delinquent debts. His VA disability allows him to pay the family household expenses, but he does not receive enough to resolve additional debts. (Tr. 20-21, 24)

Applicant's most recent job was with a DOD contractor since August 2020. As a defense contractor he falls under the German Employment System as a German employee. Applicant says that his employer made a mistake during the security process. As a result, he was let go because he did not have an active security clearance. However, in Germany, you just cannot fire someone. The employer is required to go to court to determine if the firing was legal. In Applicant's case, the German court required his employer to continue to sponsor Applicant until the outcome of the security clearance process. (Tr. 25-28; GE 4 at 3-10)

When he completed his security clearance application (e-QIP) on August 4, 2021, Applicant listed that he failed to file his federal income tax returns for tax year 2018 under Section 26 – Financial Record – Taxes. He wrote:

I did not realize this mistake until I was filling out this information. Our family went through a huge change in 2019, and dealt with several health and employment issues, I didn't realize that I had not filed last year. I will file 2018 when I file 2019 this year. This was an oversight on my part due to extenuating circumstances. (GE 1 at 83)

During his background investigation interview on September 1, 2021, Applicant stated he intended to file his 2018 federal income tax return but he is missing his W-2 for 2018 and his attempts to obtain a copy of his W-2 form for 2018 have been unsuccessful as a result of the Covid-19 pandemic. It has been difficult for him to contact the Internal Revenue Service (IRS). (GE 2 at 2-3)

In response to Interrogatories, dated March 2, 2023, Applicant indicated he had not filed his 2018 federal income tax returns because he was unable to obtain a copy of

his W-2. He denied the four accounts placed for collection with the DPT TREASURY because there insufficient information to identify the debt. (GE 3)

On December 10, 2023, Applicant completed another Interrogatory regarding the filing status of his federal income tax returns for tax years 2017 – 2022. He indicated that he filed all of his federal income tax returns with the exception of tax year 2018 and tax year 2022. (GE 4 at 2) (Note: His federal income tax return for tax year 2022 has been filed and is not an issue in this case.)

The current status of the SOR allegations are:

SOR ¶ 1.a: failure to file Federal income tax returns for tax year 2018. Applicant admits this allegation. In 2018, Applicant's status changed from being a civilian employee for the U.S. government to being a contractor for DOD whose status was as an employee in the German Employment System. He left the federal service in October 2018 because his status as a civilian employee in Germany could not be extended. He was required to file federal income taxes for tax year 2018. Applicant claims he could not file his 2018 federal income tax returns because he no longer had access to the on-line portal where he could access his W-2. He attempted to have the DOD send him his W-2 but was unsuccessful. He really did not know where to obtain a W-2. Eventually, he stopped attempting to locate his W-2 until the issue showed up with his security clearance process. He began attempting to contact OPM to get a copy of his W-2, which was not the correct agency to inquire about obtaining a copy of this W-2. He did not contact the Internal Revenue Service (IRS) about obtaining a copy of his W-2. He did not know who to contact. (Tr. 28-32)

In October 2023, a Department Counsel from DOHA contacted Applicant about scheduling his hearing. The Department Counsel advised him to submit a Form 4506-T with IRS. He submitted this FORM in October 2023. He contacted the IRS several times, but never received a response. At the close of the hearing, he was still awaiting a response from the IRS. (Tr. 36-37; AE A)

After the hearing, Applicant finally heard from the IRS. They provided him a copy of his W-2 form. Applicant completed his federal income tax return for tax year 2018 and indicated he intended to forward it to the IRS. The 1040 form lists Applicant's income as \$48,852 and that he was owed a refund in the amount of \$2,792. He indicated in his post-hearing response, dated June 18, 2024, that he intended to mail the 2018 federal income tax return to the IRS within a week. He provided no proof that he had mailed the return. (AE D at 2, 44-45)

SOR ¶¶ 1.b, 1.c, 1.e, and 1.f: DPT TREASURY debts placed for collection in the respective amounts of \$9,112; \$8,968; \$469, and \$48. In response to DOHA Interrogatories, dated March 2, 2023, Applicant denied these debts because there was not enough information for him to know what these debts were. He initially thought they may be related to student loans. After the hearing, Applicant obtained a copy of his recent credit report with Transunion dated June 11, 2024. The credit report indicated that the debts owed to DPT Treasury originated with Landstuhl Regional Medical Center in

Germany. They were medical bills that he incurred when he was a DOD civilian. He claims he had medical insurance and that he should not have to pay these bills. He believes that if you are paying insurance, you should not be burdened with medical debt. Despite his feelings, he learned that he could set up an account with pay.gov and will start making payments towards these debts using this portal. At the close of the record, he had not provided proof that he started making payments towards these debts. He claims the debts alleged in SOR ¶¶ 1.b and 1.f are the same debt. They have the same account number. I find for Applicant with regard to SOR ¶ 1.f. (AE D at 2; 10-22)

SOR ¶ 1.d: \$1,939 utility debt placed for collection: Applicant testified during the hearing that he believes this is a utility bill from a German electric company. He believes it is related to the electric company he used when he lived in base housing a few years ago. The German electric company is the same company he uses now so he believes the debt is resolved. (Tr. 48-51) After the hearing, he provided a recent credit report, dated June 11, 2024. The debt is no longer listed on the credit report. I find for Applicant with regard to SOR ¶ 1.d. (AE D at 2-30)

Debt Not Alleged in SOR

During the hearing, Applicant discussed the issues he was having with his student loans. He initially thought his student loan accounts were the debts the DPT Treasury was collecting. He attended a college who the Department of Education ultimately forgave the students their student loans because of the school's fraudulent practices. He said the school enrolled him for a semester without his knowledge. (Tr. 38) After the hearing, he provided a statement from Nelnet, dated July 12, 2024. indicating that the Department of Education approved the discharge of his student loans based on his Total and Permanent Disability. (AE E) There is no evidence in the file that his student loans were delinquent. None of his student loans were alleged in the SOR. This information is considered under extenuation and mitigation.

Whole Person Factors

Applicant provided copies of his DD 214s which showed his honorable service with the Air National Guard (ANG), Army, and Air Force. He provided copies of his Air Force performance evaluations which were favorable. He has received several letters of appreciation for his duty performance as a DOD civilian and while on active duty. (AE C at 3-40)

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 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following applies in this case:

- (a) inability to satisfy debts:
- (b) 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.

AG ¶¶ 19(a) and 19(b) apply because Applicant incurred five debts, an approximate total balance of \$20,000. AG ¶ 19(f) applies because Applicant failed to timely file his federal income tax return for tax year 2018.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following apply:

- (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, 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.

AG ¶ 20(a) does not apply because Applicant's financial issues are ongoing and remained unresolved at the close of the record. AG ¶ 20(b) partially applies because it appears Applicant incurred close to \$20,000 in medical bills. The mitigating condition is given less weight because Applicant did not behave responsibly under the circumstances. He ignored his medical bills for years resulting in the debts being placed for collection through the DPT Treasury. After the hearing, he mentioned that he intended to start making payments towards these debts but had not entered into a repayment agreement.

AG ¶ 20(d) does not apply because Applicant ignored his delinquent debts for years. He felt that his credit report would not adversely affect him because he lived overseas. While Applicant initially had a point about not being able to identify the original creditors of the debt which was being collected by the DPT TREASURY as alleged in the SOR, he was able to track down the original creditor by obtaining a more recent copy of his credit report after the hearing. He does not deny that he incurred these medical debts. He felt he should not have to pay them because he believed insurance should cover all of the medical debts. In his post-hearing submissions, he mentioned he intends to start repaying these debts to the DPT TREASURY using the website pay.gov. He had not started making payments.

AG ¶ 20(g) partially applies. Applicant finally received a copy of his W-2 for 2018 in June 2024. Applicant prepared his federal income tax return for tax year 2018. However, he had not provided proof that he sent it the IRS at the close of the record. While there was some confusion on Applicant's part on how to get his W-2, he should have been more diligent in resolving this problem. With regard to timely filing tax returns, the DOHA Appeal Board has commented:

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). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* 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, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See

Cafeteria & Restaurant Workers Union Local 473 v. McElroy, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

Applicant did not meet his burden of proof to mitigate the concerns raised under financial considerations.

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 commonsense 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 those guidelines but some warrant additional comment.

I considered Applicant's 18 years of honorable military service, his 11 years service as a DOD civilian employee, and his years as a DOD contractor. More concerning, are his lack of due diligence in ensuring his 2018 federal income tax return was filed in a timely manner and his deliberate failure to repay his medical debt. While he began to take steps after the hearing to resolve these issues, there is not a sufficient track record to show that he will make payments to the DPT TREASURY on a regular and consistent basis. A promise to pay in the future, is not sufficient to mitigate security concerns raised by Applicant's failure to timely pay or resolve his delinquent accounts, especially if the debts were ignored over a period of years. While Applicant is close to filing his 2018 federal income tax return, he provided no proof that the return was mailed to the IRS.

The security concerns raised under Financial Considerations are not mitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c, 1.e:	Against Applicant
Subparagraphs 1.d, 1.f:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge