



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01447
)	
Applicant for Security Clearance)	

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

07/12/2024

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 December 13, 2022. On September 29, 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), which became effective on June 8, 2017.

Applicant answered the SOR on October 24, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 19,

2023, and the case was assigned to me on May 3, 2024. On May 17, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on June 5, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) 1-A through F, which were admitted without objection.¹ I kept the record open until June 17, 2024, to enable him to submit additional documentary evidence. He timely submitted AX G, which was admitted without objection. DOHA received the transcript (Tr.) on June 14, 2024. The record closed on June 17, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 67-year-old program analyst employed by defense contractors since February 2015. He served on active duty in the U.S. Army from September 1977 to March 1999, retired as a chief warrant officer (CW2), and received an honorable discharge. His SCA reflects that, after his discharge, he was employed by federal contractors from April 2002 to September 2013, unemployed from October 2013 to June 2014, employed by a federal contractor from June to August 2014, and unemployed from August 2014 until he was hired by a federal contractor in February 2015. (GX 1 at 11-22) He held a security clearance while on active duty. He received a clearance as an employee of a defense contractor in June 2018. (GX 2 at 42).

Applicant married in June 1976, divorced in June 1993, married in November 1993, divorced in April 2000, married in December 2001, and divorced in November 2020. His third ex-wife suffers from dementia and lives with him. (Tr. 40) He has an adult son who is mentally compromised. He received a degree in business administration in 1999. (Tr. 29) He attended college online from April 2013 to October 2014 but did not receive a degree. The student loans alleged in the SOR were incurred in 2013 and 2014. (Tr. 30)

The SOR alleges four delinquent Department of Education student loans referred for collection of \$13,100 (SOR ¶ 1.a); \$12,126 (SOR ¶ 1.b); \$7,852; (SOR ¶ 1.c); and \$5,325 (SOR ¶ 1.d). They are reflected in a February 2023 credit report. (GX 5 at 3) He stopped making payments on his student loans in April 2014. (GX 3 at 5)

On May 23, 2024, Applicant signed a contract with a private company advertising that it helps individuals with student loans find assistance programs offered by the Department of Education. (AX A/B/C/D) After the hearing, he terminated his contract with the private company. In a post-hearing statement, he reported that he is now negotiating

¹ Applicant's Exhibit (AX) 1-A is a cover letter. AX 1-B through 1-i are letters attesting to his good character. The rest of his exhibits are labeled to correspond to the subparagraphs in the SOR. Thus, AX A/B/C/D corresponds to SOR ¶¶ 1.a through 1.d, AX E/G corresponds to SOR ¶¶ 1.e and 1.g, and AX F corresponds to SOR ¶ 1.f.

a debt-consolidation loan directly with the U.S. Department of Education. (AX G) On a date not reflected in the record, he was enrolled in the Department of Education Fresh Start program for income-driven repayment. (AX A/B/C/D-1) However, as of the date the record closed, he had submitted no evidence of payments, a debt-consolidation loan, or other means of resolving the delinquent student loans. He also has a private student loan, on which he is making monthly \$200 payments. The private student loan is not alleged in the SOR.

Applicant began having federal tax problems when his income tax returns for 2010-2013 were audited and medical expense deductions attributable to a former spouse were disallowed. He did not file his federal returns for 2014, 2015, and 2016 until January 2018. (GX 3) His failures to timely file these federal returns were not alleged in the SOR.

The SOR alleges that Applicant failed to timely file federal and state income tax returns for 2018 through 2022 (SOR ¶¶ 1.e and 1.f) and that he owes delinquent federal income taxes totaling about \$59,360 for tax years 2011 through 2017 (SOR ¶ 1.g) Applicant admitted these allegations. He disclosed his tax delinquencies in his December 2022 SCA. During a security interview in April 2023, he stated that he had hired a tax attorney to assist him. (GX 3 at 16) At the hearing, he submitted evidence that his tax attorney had filed his federal income tax returns for 2018 through 2022 in October 2023 and was working on the return for tax year 2023. His returns reflect that he owes \$4,781 for tax year 2018; \$2,254 for tax year 2019; \$37 for tax year 2020; \$1,725 for tax year 2021, and \$7,332 for tax year 2022. (AX E/G) He testified that his tax attorney intends to file an offer in compromise now that all the past-due returns have been filed. (Tr. 44) As of the date the record closed, he had submitted no evidence of an offer in compromise or any other resolution of his federal tax debt.

Applicant also submitted evidence that his tax attorney filed his state tax returns for 2020, 2021, and 2022 in October 2023 and filed his state tax returns for 2018 and 2019 in December 2023. He owed \$2,196 for 2018; \$4,054 for 2019; \$1,821 for 2020; \$1,346 for 2021, and \$1,507 for 2022. He has been paying his state tax debt through a payment plan, and his balance as of May 18, 2024, was \$2,003. (AX F) The state tax debt was not alleged in the SOR.²

During a security interview in April 2023, Applicant submitted a personal financial statement reflecting net monthly income of \$13,814; expenses of \$7,360; debt payments of \$6,352; and a net monthly remainder of \$102. (GX 3 at 14-15) His debt payments did not include student-loan payments or payment plans for past-due federal or state income taxes. At the hearing, he testified that he changed jobs after the security interview because his former employer allowed his security clearance to lapse, and he took a pay cut to work for his current employer. (Tr. 24-25)

² The late federal tax returns for tax years in 2014, 2015, and 2016, the past-due state tax returns, and the state tax debt were not alleged in the SOR and may not be an independent basis for denying or revoking Applicant's security clearance. I have considered this evidence for the limited purposes of evaluating Applicant's evidence of mitigation and in my whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

Applicant submitted letters attesting to his good character from his current girlfriend, his nephew, a minister, a former soldier who has known him for 37 years, a previous supervisor, and three coworkers who have known him for 15-17 years. They all regard him as caring, thoughtful, hardworking, loyal, and a person of high integrity with a strong moral compass. (AX 1-B through 1-I)

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 submitted at the hearing 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(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;

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 delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment, multiple marital breakups, and the medical issues of his adult son and his ex-wife were conditions largely beyond his control. However, he has not acted responsibly. He stopped making payments on his Department of Education student loans in 2014. He made one payment to a company that purports to assist student-loan debtors, but terminated that contract shortly after the hearing. He has not yet arrived at any payment plan or made any payments since 2014. He has not yet begun to resolve his federal tax debt.

AG ¶ 20(c) is not established for the delinquent student loans, because Applicant has not received any advice of the type contemplated by this mitigating condition. This mitigating condition is partially established for his delinquent federal taxes because he has engaged the services of a tax attorney and filed his past-due returns. However, as of the date the record closed, he had not yet made any payments, negotiated a payment plan, or made an offer in compromise.

AG ¶¶ 20(d) is not established. As of the date the record closed, Applicant had not submitted evidence of payments, payment plans, or other resolution of his delinquent student loans and past-due federal taxes.

AG ¶ 20(g) is established. Applicant has filed his federal tax returns through tax year 2022 and is working on his return for 2023. He has filed his past-due state income tax returns. However, a security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that Applicant has filed his past-due returns "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). "A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake." ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019, citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)). Applicant's failure to timely file his federal and state tax returns for several years and then acting to file his past-due returns only after his security clearance was in jeopardy "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015)

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). I have considered Applicant's candor at the hearing, his lengthy and honorable military service, his service as a defense contractor employee, and the testimonials concerning his reliability, trustworthiness, and good judgment. I have considered that he has held a clearance for most of his adult life, apparently without incident. 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 delinquent student loans, failure to timely file his federal and state income tax returns, and 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

Subparagraphs 1.a-1.g: 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