



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



In the matter of:)
)
) ISCR Case No. 24-00195
)
Applicant for Security Clearance)

Appearances

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

12/05/2024

Decision

CERVI, Gregg A., 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 29, 2021. On March 20, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) (now known as the DCSA Adjudication and Vetting Services (AVS)) 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; 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 (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on April 17, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on May 20, 2024. On May 21, 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 May 24, 2024. He did not submit any material in response to the FORM, nor did he object to the Government's exhibits. The case was assigned to me on September 9, 2024. Government Exhibits (GE) 3-5 are admitted into evidence without objection. The FORM marked the SOR and Applicant's Answer to the SOR as GEs 1 and 2, however, they are already part of the record.

Findings of Fact

Applicant is a 34-year-old consultant for a Government contractor since April 2021. He earned a bachelor's degree in 2012. He is unmarried and has no children. He has never been granted DoD security eligibility.

The SOR alleges under Guideline F that Applicant failed to file, as required, state income-tax returns for tax years 2015, 2016, and 2020, and as of the date of the SOR, they remain unfiled (SOR ¶ 1.a). It also alleges that Applicant is indebted to the Federal Government for delinquent taxes totaling \$5,383 for tax year 2020; \$522 for tax year 2016; and \$655 for tax year 2015 (SOR ¶¶ 1.b - 1.d).

Applicant answered the SOR and stated that his state tax returns for 2015 and 2016 were not filed when due, or by the date of the SOR. He explained his actions with respect to each allegation, including that he was a resident of another state in 2016 but failed to file that income-tax return when due, and that he filed the 2016 state tax return in 2020 and his 2020 tax return in 2022.

Applicant stated that his tax issues and 2016 loss of employment were exacerbated by the unexpected loss of his twin brother in 2015. (Ans.) He noted in his SCA that he was fired from employment in 2016 and 2019. He listed that he was "terminated due to tardiness" from his job in 2016 and "fired" in 2019 "while he was on vacation" but due to unknown reasons. (GE 3)

Applicant stated in his Answer to the SOR that he failed to file his state income-tax return for 2015. It remained unfiled until 2022, however the state tax office has no record of the return, and Applicant does not have a copy. He intended to follow up with the tax authority in April 2024. In regard to his 2016 tax return, Applicant stated that he was not a resident of state "A," so he filed a return in state "B" in 2022 but the state B tax authority has no record of the filing. Applicant intends to resubmit his income-tax return and verify his status with state A. Regarding Applicant's state A tax return for 2020, he stated that he filed it in 2022. (Ans.) Applicant's efforts to work with a tax preparer to file his state income-tax returns were thwarted by his own failure to resolve technical issues raised by the preparer. He eventually claimed to have filed his state income-tax returns on his own, but he failed to keep copies and was unable to obtain copies from the preparation software he used. As of Applicant's Answer to the SOR, he had not confirmed the filing of his state income-tax returns for 2015, 2016, and 2020.

In reference to delinquent federal taxes owed, Applicant provided evidence of a payment plan and regular payments on his federal tax debt for 2020 since September 2023, and he has reduced the amount owed to about \$4,802. Applicant also paid off his federal tax debts for 2015 and 2016 in August 2022. (Ans.)

Of note, despite failing to pay federal taxes when due, and failure to file state income-tax returns when due, Applicant traveled outside of the United States on five personal trips to Europe and the Caribbean from 2016 to 2020. Applicant requested a determination on the record without a hearing, so I had no opportunity to evaluate his credibility and sincerity based on his demeanor, or to question him about the circumstances that led to his failure to file his state income-tax returns when due or pay his federal taxes when due. In addition, the record is devoid of evidence of personal financial counseling or efforts to ensure that his future tax returns will be timely filed and his taxes will be timely paid.

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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG ¶ 1(d).

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. . . .

The relevant disqualifying condition under AG ¶ 19 is:

(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.

Applicant’s admissions and the documentary evidence in the record are sufficient to establish the disqualifying condition above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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

(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 has a history of failing to timely file state income-tax returns and timely pay federal taxes. Although he asserts that the loss of his twin brother caused him to lose employment in 2016 and become delinquent in his tax filing obligations, his employment history does not clearly support this contention. He was fired in 2016 and 2019 but was able to take vacations outside of the United States regardless. His employment and tax history evidence a degree of personal and financial irresponsibility and unreliability. His efforts to work with a tax preparer were thwarted by his own failure to resolve technical issues raised by the preparer. He eventually claimed to have filed his state income-tax returns on his own, but he failed to keep copies and was unable to obtain copies from the preparation software he used. As of his Answer to the SOR, he was inexplicably unable to confirm the filing of his tax returns with both state income-tax authorities with whom he claimed to have filed in 2022.

Security requirements include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Failure to comply with federal and/or state tax laws suggests that an applicant has a problem with

abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. By failing to file or pay his income taxes in a timely manner, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

Applicant's tax issues have been longstanding and remain a continuing concern. I am not persuaded by Applicant's claims of efforts to file with a tax preparer, and his own efforts to file the returns himself as he is unable to show that returns filed in 2022 were received by two state tax authorities. I also have concerns about his overall financial responsibility and willingness to comply with future income-tax obligations, as he failed to pay his federal income taxes when due for 2015, 2016, and 2020, and he waited until September 2023 to arrange a payment plan and to pay off smaller amounts owed. No mitigating condition relieves him of his overall financial irresponsibility with regard to meeting income tax filing requirements on a timely basis. Mitigation credit is awarded for paying off his smaller federal tax obligations for 2015 and 2016 and arranging and paying on a payment plan for his larger 2020 obligation.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I considered Applicant's personal family loss and the resultant difficulties it may have caused. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor, or to inquire into the issues raised in the SOR. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person, including exceptions available under Appendix C of SEAD 4. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to continue his 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.d:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge