



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 24-00345
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

10/01/2024

**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 August 21, 2022. On April 5, 2024, 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 May 15, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on June 24, 2024. On June 26, 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 September 13, 2022, and did not respond. The case was assigned to me on September 26, 2024.

The FORM consists of nine items. FORM Items 1 and 2 are the pleadings in the case. FORM Items 3 through 9 are the evidence submitted by Department Counsel in support of the allegations in the SOR. The FORM Item 9 is a summary of a personal subject interview (PSI) conducted on October 2, 2019. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant did not respond to the FORM. I conclude that he waived any objections to the FORM Item 9 by failing to object to it. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Items 3 through 9 are admitted in evidence.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted SOR ¶ 1.a, alleging that he failed to file federal income tax returns for at least tax years 2020, 2021, and 2022. His admission is incorporated in my findings of fact.

Applicant is a 59-year-old aircraft mechanic employed by a defense contractor since 2010. He graduated from high school in 1984 and has earned numerous flight safety certificates. He served on active duty in the U.S. Air Force from 1985 to 2005, retired as a technical sergeant (pay grade E-6) and received an honorable discharge. He remained in the Inactive U.S. Air Force Reserve until 2015. He held a security clearance while on active duty in the Air Force and while employed by a defense contractor.

Applicant has married and divorced several times. The information regarding his marriages is garbled in his SCA. During an interview with a security investigator, he stated that he and his third wife separated in February 2022, because of disputes over her mishandling of financial matters and diverting funds from his bank account to pay bills she had incurred.

In Applicant's SCA, he disclosed that he had failed to file federal income tax returns and pay the taxes due for 2016, 2017, 2020, and 2021. He stated that he was "wrapped up" in his marital issues and forgot to file the returns. (FORM Item 3 at 47-48) When he was interviewed by a security investigator in June 2023, he claimed that he had filed the returns for 2017 and 2018 and received refunds. (FORM Item 4, interview summary at 3) IRS records reflect that he has not filed tax returns for tax years 2020, 2021, and 2022. (FORM Item 5, last three unnumbered pages) In Applicant's answer to the SOR, he

addressed his delinquent debts, which are not alleged in the SOR, but did not address his repeated failures to file his federal tax returns as required. (FORM Item 2)

### **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 “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See ISCR Case No. 17-04166* at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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 relevant 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. . . ."

Applicant's admissions and the evidence in the SOR establish the following disqualifying conditions under this guideline:

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 relevant mitigating condition is set out in 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." This mitigating condition is not established. Applicant has submitted no evidence that the past-due returns have been filed.

## **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 honorable military service, his many years of service as the employee of a defense contractor, his many years of holding as security clearance, and his mental and emotional distraction surrounding his most recent marital breakup. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 failures to file federal income tax returns as required.

## **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:

Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge