



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



In the matter of:)	
)	
)	ISCR Case No. 24-00192
)	
Applicant for Security Clearance)	

Appearances

For Government: John Renehan, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2023. On April 29, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 1, 2024, and requested a decision on the written record in lieu of a hearing. On December 12, 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. The original SOR consisted of one allegation: "You are indebted to the Federal Government for delinquent taxes in the amount of \$2,613 for tax year 2022. As of the date of this Statement of Reasons the taxes remain unpaid." In the FORM, Department Counsel amended the SOR by adding a second allegation. As amended, the SOR alleges:

- a. You failed to timely file, as required, Federal income tax returns for tax years 2020 and 2022.
- b. You are indebted to the Federal Government for delinquent taxes in the amount of \$2,613 for tax year 2022. As of the date of this Statement of Reasons the taxes remain unpaid.

Applicant received the FORM on January 20, 2025, admitted that he owed federal taxes but stated that the IRS did not have a procedure that allows him to pay them. On February 13, 2025, Department Counsel told Applicant how to obtain a copy of his tax transcript. On February 14, 2025, Applicant sent his transcript for tax year 2022 and screen shots showing multiple payments to the IRS. The documents are included in the record as Applicant's Exhibit (AX) A. They were admitted without objection on March 7, 2025. The case was assigned to me on May 7, 2025.

Findings of Fact

In Applicant's answer to the SOR, he denied the underlying premise of Guideline F, stating that he is responsible, works hard, and obeys the law. He admitted the tax debt alleged in SOR ¶ 1.b. His admission is incorporated in my findings of fact.

Applicant is a 49-year-old coatings operator employed by a federal contractor since May 2021. He was previously employed by another federal contractor from October 2006 to April 2011. He was born in a foreign country, came to the United States in November 1993, and became a U.S. citizen in May 2001. He married in February 2000, divorced in September 2006, married in July 2010, and divorced in October 2017. He owns the home where he lives. He has a 26-year-old son and a 14-year-old daughter. He has never held a security clearance.

When Applicant was interviewed by a security investigator in April 2023, he disclosed that he had failed to timely file his federal income tax returns for 2020 and 2021. He told the investigator that he did not timely file his tax returns because he forgot about them. He did not assert or provide evidence of inability to pay the taxes that were due for those years. He filed his 2020 return in April 2022 and was entitled to a refund of \$6,472 for that tax year, and he owed \$4,649 for tax year 2021. (GX 7 at 2) The IRS diverted his 2020 refund, applied it to his tax debt for 2021, and refunded \$765. (GX 5 at 6)

Applicant had not yet filed his tax return for 2022 at the time of the security interview in April 2023. He filed it in July 2024. (AX A at 1) The tax transcript for tax year 2022 reflects that he owed a total of \$12,490 for 2022, that \$9,877 had been withheld from his pay, and he had made an estimated payment of \$1,000 in June 2022 and established a payment plan. Pursuant to the plan, he made payments of \$393 and \$107, in August, and \$500 payments in September, October, November, and December 2024. He no longer owes any taxes for tax year 2022. (AX A at 2-3)

When Applicant responded to the FORM, he submitted six screen shots from his cellphone reflecting payments to the IRS. The screen shots do not reflect his name or other identifying information. However, I am satisfied that the screen shots accurately reflect his payment record, because the amounts and payment dates on the screen shots correspond exactly to the payments and dates on the tax transcript.

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 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. . . .

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).

The following disqualifying conditions under this guideline are established by Applicant’s admissions and the evidence in the FORM:

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; 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) and 20(b) are not established. Applicant did not file the 2022 return until July 2024, after he received the SOR and realized that his past-due returns jeopardized his chances of being granted a security clearance. His failures to timely file returns are arguably infrequent, because they happened only twice. His failures to timely file his tax returns did not occur under circumstances making recurrence unlikely. He submitted no evidence of circumstances largely beyond his control that made him unable to timely pay the taxes that were due.

Failure to timely 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). A clearance adjudication is not directed at collecting debts. 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. See ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

AG ¶ 20(g) is established. Applicant has filed his past-due returns and paid the taxes that were due. However, his belated resolution of the tax issues does not end the inquiry. The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation, because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017). In this case, Applicant did not file his federal income tax

returns for 2020 and 2022 and initiate a payment plan until he submitted his SCA, was interviewed by a security investigator, and received the SOR. His dilatory compliance with his tax obligations undercuts the weight of the mitigating evidence he submitted.

Whole-Person Analysis

Under AG ¶ 2(c), the 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. An administrative judge must evaluate an appellant's security eligibility by considering the totality of the appellant's conduct and all the 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). 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 failure to timely file his federal income tax returns.

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**

Subparagraph 1.b: **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