



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 12-10072
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2015

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 March 14, 2012. On November 21, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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) implemented by DOD on September 1, 2006.

Applicant received the SOR on December 1, 2014; answered it on December 19, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015, and the case was assigned to me on January 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 6, 2015, scheduling the hearing for February 25, 2015. I

convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until March 6, 2015, to enable him to submit additional documentary evidence. He timely submitted AX G through O, which were admitted without objection. DOHA received the transcript (Tr.) on March 10, 2015.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations, explaining that some of the delinquent debts had been paid or were in the process of being resolved. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 28-year-old quality inspector employed by a defense contractor at a naval shipyard. He has worked for his current employer since August 2007. He has never held a security clearance.

Applicant graduated from high school in June 2004. He was a full-time college student for two years and has attended additional college-level classes at several institutions, but he does not have a degree. He has never married, but he has resided with a cohabitant since April 2009. He has no children.

When Applicant submitted his SCA in March 2012, he disclosed that he had failed to file his federal and state income tax returns for 2008, 2009, and 2010. He stated that he was "scared to do it wrong," but that he was paying his 2008 taxes and "about to go to a tax service" to file all his tax returns. He also disclosed that he had a judgment against him for a delinquent car loan, that the judgment was being collected by garnishment of his pay, and that he had multiple delinquent credit card accounts. (GX 1 at 30-41.)

When Applicant was interviewed by a security investigator in May 2012, he admitted that he still had not filed his federal and state income tax returns for 2008 through 2011. He stated that he intended to engage a tax service to file his returns as soon as possible. He stated that he was paying \$50 per month on his state taxes. (GX 2 at 4.) When Applicant responded to financial interrogatories from the DOD CAF in August 2014, he attached copies of federal and state income tax returns for 2009 through 2012. The copies are unsigned, undated, and bear no indicia of mailing or electronic filing. (GX 2 at 24-68.)

At the hearing, Applicant testified that he filed his returns for TY 2008 through 2013 in March 2014. He gave all his tax information to a tax preparer, but he was not sure whether the returns were filed by mail or electronically. He also testified that he filed his 2014 returns in February 2015, and he provided documentary evidence that the returns were received. He admitted that his need for a security clearance was the impetus for filing his returns. (AX A at 27-29; Tr. 40-41.)

A state tax lien for \$3,768 was levied against Applicant's pay in September 2014. (AX L.) It is being collected at the rate of \$125 per two-week pay period. (AX B.) In February 2015, Applicant entered into a payment agreement with the IRS for the taxes due in TY 2008 through 2012. His agreement requires payment of \$163 per month beginning on March 28, 2015. (AX N.) At the hearing, he estimated that he owed about \$12,000 in federal taxes. He estimates that after his TY 2014 refund is seized, he will owe a balance of less than \$10,000.¹ (Tr. 38.)

The SOR alleges 16 delinquent debts not related to Applicant's tax debts. The table below summarizes the evidence concerning the delinquent debts alleged in the SOR.

SOR	Debt	Amount	Status	Evidence
1.c	College Tuition	\$1,815	Unpaid	AX A at 17
1.d	Satellite TV	\$582	Unpaid	AX A at 20
1.e	Cell Phone	\$511	Paying by automatic payroll deduction	AX E; AX F
1.f	Cell Phone	\$180	Unpaid	Tr. 50
1.g	Catalog Sale	\$177	Paid	Answer to SOR
1.h	TV-Cable	\$95	Unpaid	Tr. 51
1.i	Medical	\$113	Paid	Answer to SOR
1.j	Medical	\$40	Paid	GX 2 at 14-17
1.k	Judgment (car loan)	\$7,767	Paid; collected by garnishment	Answer to SOR; Tr. 53
1.l	Judgment (credit card)	\$1,477	Paid; collected by garnishment	AX H through K; Tr. 56
1.m	Judgment (credit card)	\$900	Paid; collected by garnishment	Answer to SOR; GX 2 at 18; Tr. 56
1.n	Student loan	\$472	Paying by automatic payroll deduction	Answer to SOR; GX 2 at 20
1.o	Credit card	\$427	Paid	Answer to SOR
1.p	Medical	\$153	Unresolved	AX C; AX D; Tr. 59
1.q	Internet	\$116	Unresolved	Tr. 60
1.r	Overdrawn Checking Account	\$569	Unknown	No documentation, but provided contact number (GX 2 at 21-22.)

¹ Applicant's tax debts are not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant's tax debt for these limited purposes.

In Applicant's August 2014 response to the financial interrogatories, he submitted a personal financial statement (PFS), reflecting net monthly income of about \$2,213, expenses of \$2,043, and debt payments of \$1,746, leaving a monthly shortfall of \$1,576. (GX 2 at 76.) At the hearing, he was uncertain how he computed his net monthly income and expenses. (Tr. 62-64.) He admitted that he lives paycheck to paycheck. (Tr. 66.)

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, *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 AG. 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." See 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*, 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The SOR alleges that Applicant failed to timely file his federal and state income tax returns for TY 2008 through 2013 (SOR ¶¶ 1.a and 1.b). It also alleges 16 delinquent non-tax debts totaling about \$15,394. (SOR ¶¶ 1.c-1.r). His federal tax debt of about \$12,000 is not alleged.

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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, his credit reports, the documentary evidence, and his testimony at the hearing establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same").

The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, ongoing, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Except for the medical debts alleged in SOR ¶¶ 1.i, 1.j, and 1.p, the debts were not caused by conditions largely beyond his control. He has not acted responsibly. To the contrary, he did not take meaningful action until he realized his debts were an impediment to obtaining a clearance and put his job in jeopardy.

AG ¶ 20(c) is not established. Applicant needs financial counseling, but there is no evidence that he has sought or obtained it, and his financial problems are not under control.

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. The debts in SOR ¶¶ 1.k-1.m were collected by involuntary garnishment, which "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011), citing ISCR Case

No. 08-06058 (App. Bd. Sep. 21, 2009). Applicant has taken an *ad hoc* approach to his financial situation. He does not have a credible, realistic plan to gain financial stability.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR, nor has he articulated a reasonable basis for disputing them.

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(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid and sincere at the personal appearance. He has taken belated steps to resolve his tax problems, but it is too soon to determine whether he will adhere to the payment plan for his federal tax debt. He has paid the debts alleged in SOR ¶¶ 1.g, 1.i, 1.j, and 1.o; and he is paying the debts in SOR ¶¶ 1.e and 1.n by payroll deduction. However, the three large debts in SOR ¶¶ 1.k, 1.l, and 1.m were collected by involuntary garnishment. Applicant has little grasp of his overall financial situation and is motivated primarily by his need for a security clearance rather than a sense of duty or obligation.

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 financial situation. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.j:	For Applicant
Subparagraphs 1.k-1.m:	Against Applicant
Subparagraphs 1.n-1.o:	For Applicant
Subparagraphs 1.p-1.r:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge