



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-00490
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2016

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 on December 17, 2013. On July 24, 2015, 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; Department of Defense 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. The AG are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on November 3, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on December 10, 2015, and a complete copy of the file of relevant material

(FORM) was sent to Applicant on the same day, giving him an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on December 20, 2015, and did not respond. The case was assigned to me on August 11, 2016.

Findings of Fact¹

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.l and denied SOR ¶¶ 1.m-1.p. His admissions are incorporated in my findings of fact.

Applicant is a 65-year-old senior lifecycle logistician employed by a defense contractor since December 2013. He served in the U.S. Air Force from December 1970 to January 1994 and received an honorable discharge. He has been employed by defense contractors since January 2001. He has held a security clearance since July 1976.

Applicant married in October 1978, divorced in June 1982, and remarried shortly after his divorce. He has three adult children. He received an associate's degree in February 1990.

The SOR alleges that Applicant failed to timely file his federal and state taxes from 1994 to 2013 (SOR ¶¶ 1.a and 1.b), that the IRS has filed a tax lien against him for \$42,108 (SOR ¶ 1.c), and that the state taxing authority has filed nine tax liens against him totaling about \$20,140 (SOR ¶¶ 1.d-1.l). In his security clearance application and a follow-up interview with a security investigator, he stated that he did not file his returns starting in 1994 because he was unable to pay the taxes due. (FORM Item 3 at 36; FORM Item 4 at 9.) In his answer to the SOR, Applicant stated that he has entered into payment agreements and is making monthly payments on the federal and state tax debts. He submitted no documentation of payment agreements or payments.²

SOR ¶ 1.m alleges an unsatisfied judgment obtained by a collection agency for about \$4,048, reflected in a municipal court record. (FORM Item 16.) Applicant denied the debt, stating that he had paid it, but he submitted no documentation of payment.

SOR 1.n alleges a judgment obtained by a dentist for about \$1,474, reflected in a municipal court record. (FORM Item 17.) Applicant denied the debt, stating that he does not know the dentist. There is no evidence that he disputed the debt with the creditor or the credit bureau. The debt is not resolved.

SOR ¶ 1.o alleges a pet hospital bill referred for collection of \$168, reflected in a July 2015 credit bureau report (CBR). (FORM Item 18.) Applicant admitted that he

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

² Department Counsel's submission, which was included in the FORM, specifically commented on Applicant's failure to submit any documentary evidence reflecting payment plans or payments.

received pet care from this creditor, but that he disposed of his pet three months before the date of the debt. He submitted no evidence that he disputed the debt with the creditor or the credit bureau. The debt is not resolved.

SOR ¶ 1.p alleges a deficiency of about \$8,144 after repossession of a vehicle. The debt is reflected in Applicant's December 2014 CBR (FORM Item 6.) It is not reflected in his July 2015 CBR. (Item 5.) Applicant denied the debt, stating that he paid it in full in October 2013. He submitted no documentation of the payment, but the absence of the debt in the July 2015 CBR supports his assertion that the debt was 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.

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." 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 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 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 documents included in the FORM 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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant provided no evidence of circumstances that prevented him from timely filing his tax returns or made him unable to pay his taxes or resolve the other debts alleged in the SOR.

AG ¶ 20(c) is not established. Applicant presented no evidence of counseling and no documentary evidence showing that his financial situation is under control.

AG ¶ 20(d) is not established for SOR ¶¶ 1.a-1.o. Applicant submitted no documentary evidence showing that he filed his past-due tax returns or supporting his claims that the delinquent taxes and the consumer debts were paid or are being resolved. His July 2015 CBR supports his claim that the debt in SOR ¶ 1.p was paid.

AG ¶ 20(e) is not established. Applicant denied the dental bill in SOR 1.n, but he presented no evidence that he disputed the bill with the creditor or the credit bureau.

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 and considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I have no opportunity to evaluate his/her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Despite the fact that Department Counsel specifically commented on Applicant's failure to submit relevant documentary evidence, he submitted nothing in response to the FORM.

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 and state income tax returns and his delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his 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.o:	Against Applicant
Subparagraph 1.p:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge