



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-03557
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant has not resolved his tax issues or delinquent debts, thus he has failed to mitigate the concern. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 12, 2013. On December 1, 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; 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 answered the SOR on May 4, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 13, 2016, and the case was assigned to me on August 3, 2016. On August 24, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for

September 15, 2016 at 1:00 p.m. After consulting with Applicant, DOHA issued an amended notice of hearing for September 15, 2016 at 8:30 a.m. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which I admitted over Department Counsel's objection. Applicant brought original documents, which I marked for the record as AX B through E, but did not admit. I kept the record open until September 29, 2016, to enable him to submit copies of AX B through E as he agreed, and any additional documentary evidence. He did not submit copies of AX B through E and I did not admit them. On October 5, 2016, I received two additional exhibits from Applicant (AX F and G). I reopened the record and admitted AX F and G without objection. DOHA received the transcript (Tr.) on September 23, 2016.

Findings of Fact

The SOR alleges that Applicant failed to file and pay his 2006 through 2010 Federal income taxes as required and nine delinquent debts totaling \$7,032. In his Answer, Applicant denied the tax allegation and stated that he had filed his tax returns. He admitted four of the debts, denied five of the debts, and stated that he paid SOR debt 1.e, and that SOR debt 1.i was inaccurate. Applicant's admissions in his Answer are incorporated in my findings of fact. The debts are corroborated by the November 2015, March 2015, and February 2013 credit bureau reports (CBR). (GX 4; GX 3; GX 2.)

Applicant is a 47-year-old security officer employed by a defense contractor since May 2012. He served honorably on active duty in the U.S. Army from April 1989 until February 1997 and from October 1999 until he retired in October 2011. He was deployed in Iraq in 2003, and served in the first Gulf War. (GX 1; AX G.) This is his first application for a security clearance. He received a high school equivalency degree in 1988. He and his first wife married in October 2010 and divorced in April 2011. He and his current wife married in July 2011. Applicant has an adult son who resides with him and a 13-year-old daughter who does not. (GX 1.)

Between 2006 and 2011, Applicant was stationed in South Korea. He did not file or pay Federal taxes during this time. He was erroneously told by his first sergeant that he was not required to because South Korea is in a war zone. (Tr. 24.) He prepared his 2012 Federal tax return using computer software, discovered that he owed taxes, and did not file his return. Several months later, he received a letter from the Internal Revenue Service (IRS) stating that he owed delinquent taxes. He did not take any action at that time. (Tr. 24-27.) Applicant did not timely file his Federal tax returns for 2013, 2014, or 2015. It was not until he spoke with Department Counsel about scheduling his hearing that Applicant realized that his failure to file and pay his taxes and resolve his other delinquent debts was "this serious." (Tr. 25-26.)

Applicant filed his Federal tax returns for 2006 through 2015 on July 28, 2016. He owes \$31,221 in taxes and penalties. (Tr. 33-37; AX F.) He filled out, signed, and submitted via facsimile a direct debit installment agreement for tax years 2005 through 2015 with the IRS on October 5, 2016. However, the document is not filled out correctly. Specifically, on the line where Applicant was supposed to enter the amount of his initial payment, he

reentered the total amount he owes. He then agreed to monthly installments of \$400 a month beginning in October 2016, and \$485 a month beginning in December 2017. (AX F.) Clearly, Applicant was not agreeing to pay the total balance due up front, followed by ongoing monthly installments. Applicant did not provide a corrected or final agreement with the IRS nor any record of payment. Applicant has not filed or paid his state taxes for 2006 through 2015, because he was unaware that he was required to do so. (Tr. 37-39; Tr. 58.)

Applicant testified that his transition from military life to civilian life was difficult and resulted in his incurring delinquent debt. He stated that that he recently contacted several credit bureaus and disputed some of the accounts on his CBRs, but did not provide any documentation or additional testimony in support of this statement. (Tr. 26.)

Applicant has not paid: the \$531 tax lien (SOR ¶ 1.b); the \$478 and \$2,519 credit-card debts (SOR ¶¶ 1.f, and 1.h). He does not recognize the \$505 credit-card debt alleged in SOR ¶ 1.d and has not paid it. (Tr. 41-43.) He denies owing the \$365 utility debt alleged in SOR ¶ 1.g, stating that he never lived at the address where the charges were incurred. He informed the utility company of his dispute with this account, and was told he needed to provide evidence to support his claim. He has not done so. (Tr. 44-45.) Applicant disputes owing the \$2,209 cell phone account debt. (SOR ¶ 1.i.) He explained that he incurred roaming charges while stationed in South Korea because his cell phone continued to receive incoming calls. He thinks that because he was not informed by the cell phone service provider about the charges he was incurring, he is not responsible for paying the debt. (Tr. 45-47.)

Applicant testified that he paid the \$51 medical debt (SOR ¶ 1.c), the \$240 cable bill (SOR ¶ e), and the \$134 vehicle insurance debt (SOR ¶ 1.j.) He stated that he knows he paid the cable bill because he currently has cable service with the same company. (Tr. 43-44.) He did not provide any documentary evidence of payment of any of these debts. He stated that he intends to pay the debts alleged in SOR ¶¶ 1.b, 1.f, and 1.h, which total \$3,528. (Tr. 42-46.) Applicant earns \$25 an hour, with variable overtime pay. In 2015, he earned approximately \$48,000. (Tr. 48-49.) He also receives monthly retirement pay and disability benefits. (AX G.)

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’s 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 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, corroborated by the record evidence, 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 annual . . . tax returns as required"). 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.

Applicant's financial issues are recent and ongoing, of his own making, and raise questions about his judgment. Applicant erroneously thought he was not required to file or pay taxes while he was stationed in South Korea from 2006 until 2011. However, he actively decided not to file his 2012 Federal tax return because he owed money. After receiving notice from the IRS that he owed unpaid taxes, he failed to file his 2013, 2014, and 2015 Federal tax returns. He received the SOR in December 2015, but did not take any action concerning his unfiled, unpaid taxes and other delinquent debts until July 2016. He owes over \$31,000 in delinquent Federal taxes.

While Applicant's transition from military life to civilian life may have indeed been difficult, it does not excuse his overall failure to take control of his finances. Applicant did not provide any evidence of payment of any of the SOR debts. He did not submit copies of his exhibits as he agreed to do at the hearing. The installment agreement with the IRS that Applicant submitted is necessarily void on its face. He did not follow up on the dispute with the utility company, and his dispute with the cell phone provider is unfounded. None of the mitigating conditions apply.

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 I have also considered the following:

Applicant's military career is commendable. However, through mistake, intention, or indifference, Applicant failed to resolve his financial issues. His substantial tax debt, multiple years of failing to file his tax returns, and unawareness of his state tax obligations continue to raise concerns. His overall inaction to take control of his finances is not

conduct consistent with the good judgment, reliability, and trustworthiness required of those granted access to classified information.

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 delinquent debts. 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.j:

Against Applicant

Conclusion

I conclude that 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.

Stephanie C. Hess
Administrative Judge