



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-04529
	)	
Applicant for Security Clearance	)	

**Appearances**

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

01/03/2017

**Decision**

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on July 18, 2014. On December 8, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 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 December 28, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 25, 2016. On March 29, 2016, 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 April 5, 2016, and did not respond. The case was assigned to me on December 12, 2016.

### **Findings of Fact<sup>1</sup>**

Applicant is 58 years old. He has one child born of his first marriage who is soon to be 21 years old. He divorced his first wife in November 2001 and has resided with a cohabitant since May 2014. Applicant graduated high school in 1977 and received a certificate from a technology institute in 1987.

From June 2001 through July 2014, Applicant was employed full time as a welder by a worker's union. Since September 2014, Applicant has been employed full time as a welder by a federal contractor. He has also been employed part time as a realtor since March 2011. Between July 2014 and September 2014, Applicant was financially supported by his realtor job income and other side jobs. Applicant claims, without explaining why, that he was unable to afford to pay taxes, child support, and other bills despite this relatively consistent job history.

Applicant filed his federal and state tax returns for tax years 2011, 2012, and 2013 late. Applicant did not offer a reason for the delay beyond stating that he could not afford to pay the taxes owed. Applicant owes approximately \$7,000 in delinquent federal and state taxes for those tax years.<sup>2</sup> Applicant made payment arrangements with the IRS (in September 2015) and with his state tax agency (in October 2015) to satisfy this debt. However, he did not provide evidence that any payments have been made to either entity. This debt remains unresolved.

Applicant is indebted for child support arrears in the approximate amount of \$11,757. This debt remains unresolved.

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<sup>1</sup> These facts are extracted from Applicant's SOR answer (Item 1), his security clearance application (Item 2), and the summaries of his background investigation interviews (Item 3). I considered that the summaries of the in-person and telephone interviews conducted during Applicant's background investigation (Item 3) were not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 3. Applicant was also informed that he was entitled to object to consideration of Item 3 on the ground that it was not authenticated. His failure to respond to the FORM constitutes a waiver of any objection to Item 3. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("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.")

<sup>2</sup> This debt was not alleged in the SOR. However, 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) (citations omitted). Therefore, I will consider the debt accordingly.

Applicant is indebted for a defaulted personal loan in the approximate amount of \$5,629. He obtained this loan in about 2006 to pay child support. Applicant made contact with this creditor but has not yet repaid the debt. This debt remains unresolved.

Applicant is indebted to a credit union, which was granted a court judgment for a defaulted personal loan, in the approximate amount of \$3,136. He obtained this loan in about 2006 to pay taxes.<sup>3</sup> Applicant set up a payment plan to satisfy this debt in about October 2015. However, he did not provide evidence that any payments have been made. This debt remains unresolved.

Applicant is indebted to another credit union for delinquent checking account overdraft fees in the approximate amount of \$81.<sup>4</sup> This debt remains unresolved.

Applicant has not received any credit counseling. In the FORM, Department Counsel advised Applicant that additional documentation would provide valuable evidence of his efforts to resolve his debts and also the current state of his debts. Applicant chose not to respond to the FORM, which results in a record with scant evidence of mitigation.

### **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

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<sup>3</sup> See Footnote No. 2, above.

<sup>4</sup> See Footnote No. 2, above.

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 SOR alleges that Applicant failed to file his federal and state tax returns for tax years 2011, 2012, and 2013 (SOR ¶¶ 1.a and 1.b) and two delinquent debts totaling about \$22,629 (SOR ¶¶ 1.c and 1.d). I also considered several debts that were not alleged in the SOR, including federal and state tax debt totaling about \$7,000, an unpaid court judgment of about \$3,136, and a consumer debt of about \$81.<sup>5</sup> These debts remain unresolved.

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<sup>5</sup> See Footnote No. 2, above.

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, corroborated by his credit bureau reports, 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").<sup>6</sup>

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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; and

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<sup>6</sup> I considered an apparent drafting error in SOR allegations 1.a and 1.b which does not reference "income" tax returns or failing to file "as required." Applicant's SOR answer suggests that he understood the reference to "income" tax returns and that he was required to file them.

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

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved. They were not incurred under circumstances making them unlikely to recur and they cast doubt on Applicant's current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not established. It is neither clear from the record nor Applicant's employment history that his financial problems resulted from conditions that were largely beyond his control. Further, without sufficient evidence to explain why, I cannot conclude that Applicant was unable to afford to pay his debts.

AG ¶ 20(c) is not established. Applicant has not received financial counseling. Applicant's delinquent debt of about \$32,846 remains unresolved more than two years after he was made aware of its potential impediment to his security clearance. There are no clear indications that Applicant's financial problems are under control.

AG ¶ 20(d) is not fully established. Applicant is credited with filing his overdue tax returns and initiating efforts to repay and address certain debt by contacting creditors and making partial payments. However, these efforts fall short of fully establishing AG ¶ 20(d). Applicant's mere promises to pay and unsubstantiated claims of payment agreements and partial payments, without more, do not suffice to overcome the Government's concerns.

Whether or not Applicant could afford to pay his federal and state taxes, he was required to timely file his federal and state tax returns. His failure to do so, especially over an extended number of years, reveals a deficiency in the judgment, reliability, and trustworthiness required of persons handling classified information. A person who fails repeatedly to fulfill his or her legal obligations, such as filing income tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). "Failure to file income tax returns suggests that an applicant has a problem with complying with well-established government 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).

### **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 I have considered the factors AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to 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 financial indebtedness. Accordingly, I conclude that 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 through 1.d.: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge