



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-05063
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/09/2017

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 an Electronic Questionnaires for Investigation Processing (e-QIP) on February 23, 2015. On March 18, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 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 guidelines 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 April 18, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on May 31, 2016. On June 1, 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 June 13, 2016, and he submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. The case was assigned to me on February 24, 2017.

The FORM included Item 3, a summary of a personal subject interview (PSI) conducted on March 26, 2015. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI summary. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact¹

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d and 1.g, with explanations. He denied the allegations in SOR ¶¶ 1.e and 1.f. His admissions are incorporated in my findings of fact.

Applicant is a 57-year-old aircraft mechanic employed by defense contractors since April 2004. He served on active duty in the U.S. Air Force from November 1979 until December 1999, when he retired. He held a security clearance while on active duty, and he received a clearance as a contractor employee in November 2004.

Applicant married in January 1963 and divorced in July 1994. He married again in February 1998 and divorced in July 2013. (Item 3 at 4.) He has lived with a cohabitant since August 2011. He has two adult children from his first marriage. He attended a university from February 2007 to January 2010, but he did not receive a degree.

When Applicant submitted his e-QIP, he disclosed that he had failed to timely file his federal income tax return for tax year 2010 and owed about \$1,300 in taxes. He attributed his failure to file and pay the taxes due to "just stupidity." (GX 1 at 32.) In the PSI, he admitted that he failed to file his returns or pay the taxes due in 2002 or 2003 and every tax year thereafter through 2010. (Item 3 at 5.)

The SOR ¶ 1.a alleges a federal tax lien for \$41,108, which is reflected in Applicant's March 2015 credit bureau report (CBR). In the PSI, Applicant told the investigator that the IRS garnished his pay in April 2013 and that he began making monthly \$300 payments in July 2013. The record does not contain any documentation of these payments.

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

In Applicant's response to the FORM, he submitted evidence that he made monthly payments to the IRS from July 2014 to June 2015. He paid \$297 in July 2014, \$248 in August 2015, and \$300 per month from September 2014 to June 2015. (AX A.) He stated that his payments will increase to \$400 per month in June 2016. (AX E.) He submitted no documentation of payments after June 2015.

The SOR ¶ 1.b alleges a delinquent automobile loan that was charged off in September 2011 for \$10,087, which was reflected in the March 2015 CBR. In Applicant's response to the FORM, he submitted evidence that the debt was settled for less than the full amount in May 2015. (AX B.)

The SOR ¶ 1.c alleges past-due payments on a time-share property totaling \$3,932. In Applicant's response to the FORM, he submitted an IRS Form 1099-A, reflecting that the property was sold by the creditor for \$11,349 in September 2015 and that the balance due before the sale was \$6,957. (AX C.) This evidence indicates that the sale price was sufficient to satisfy the debt.

The SOR ¶ 1.d alleges a delinquent credit-card account placed for collection of \$1,302 in April 2011. In his response to the FORM, Applicant submitted evidence that the debt was paid in full in July 2016.

The SOR ¶¶ 1.e and 1.f allege delinquent telephone bills for \$449 and \$174 placed for collection in September 2014 and October 2014. Applicant denied these debts in his answer to the SOR. In his response to the FORM, he stated that the debt in SOR ¶ 1.f was for telephone service used by his ex-wife after he moved out of the marital home. He has not disputed the debts with the original creditor or the credit reporting bureau. The debts are not resolved.

The SOR ¶ 1.g alleges a medical bill for \$166 placed for collection in a date not reflected in the March 2015 CBR. The CBR reflects that Applicant disputed the debt, it was resolved against him, and he disagreed with the decision. (Item 4 at 17.) The debt is not resolved.

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*, 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 his March 2015 CBR 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's two marital breakups were circumstances beyond his control, but he has not acted responsibly. He admitted that he had no valid excuse for not filing his tax returns, and his failure to file contributed to his current tax debt. He presented evidence of payments on the tax debt from July 2014 to June 2015, but no evidence of payments after June 2015. He did not resolve the debts alleged in SOR ¶¶ 1.b and 1.d until several years had elapsed after they became delinquent. The past-due payments on the time-share property alleged in SOR ¶ 1.c were resolved by an involuntary sale of the property, not by any voluntary action by Applicant. He has taken no meaningful action to resolve the debts in SOR ¶¶ 1.e and 1.f. He disputed the medical debt in SOR ¶ 1.g, but provided no evidence of the basis for his dispute.

AG ¶ 20(c) is not established. Applicant produced no evidence of financial counseling, and his financial problems are not under control.

AG ¶ 20(d) is not established. This mitigating condition requires a showing of good faith, which 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. Applicant receives some credit for the payments he has made on the federal tax debt, but they were prompted by the garnishment of his pay, and he has not submitted any evidence of payments after June 2015. Allowing the time-share property in SOR ¶ 1.c to be foreclosed and sold does not constitute good faith. He did not resolve the delinquent automobile loan until he was confronted with the evidence by a security investigator during the PSI, and he realized that his security clearance was in jeopardy. Similarly, he did not resolve the credit-card debt in SOR ¶ 1.d until he received the SOR.

AG ¶ 20(e) is not established. Although Applicant disputed the medical bill in SOR ¶ 1.g, the record does not reflect the basis for the dispute, and it was resolved against him.

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.

Because Applicant requested a determination on the record without a hearing, I had 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). His failure to file tax returns suggests that he has difficulty 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 security clearance adjudication is not directed at collecting debts or inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Applicant's repeated failures to fulfill his legal obligations to file tax returns and pay the taxes due indicate that he lacks the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 14-04159 (App. Bd. Aug. 1, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

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 and his failures to file tax returns and pay the taxes due. 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.g:

Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge