



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 15-05316
	)	
Applicant for Security Clearance	)	

**Appearances**

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

10/19/2017

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**Decision**

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HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant failed to properly file his tax returns and pay his taxes and was ultimately assessed with a Federal tax lien. However, he has filed all past-due returns, is participating in a repayment plan, and has timely filed and paid all Federal tax obligations since 2012. He will continue to comply with all Federal tax requirements. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on January 13, 2014. On January 16, 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 (Ex. 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 the DOD on September 1, 2006.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 29, 2016, and the case was assigned to me on September 26, 2016. On December 20, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 11, 2017. 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 through K, which were admitted without objection. I kept the record open until January 25, 2017, to enable him to submit additional documentary evidence. He timely submitted an additional document, which I have admitted as AX L without objection. DOHA received the transcript (Tr.) on January 23, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017.

### **Findings of Fact**

The SOR alleges that Applicant failed to file his Federal income tax returns for tax years 2000 through 2003 and 2005 through 2010. The SOR also alleges that the Internal Revenue Service (IRS) filed a lien against Applicant in 2012 in the approximate amount of \$35,549, and that this lien remains unpaid. In his Answer, Applicant denies that he failed to timely file and pay his taxes for tax year 2003, states that all tax returns have now been filed, and admits the tax lien. His admissions are incorporated in my findings of fact. The lien is corroborated by the May 2015 credit bureau report (CBR) (GX 4), and Applicant listed the years of the unfiled returns and the tax lien on his e-QIP, and candidly discussed them during his two 2015 personal subject interviews. (GX 2; GX 3.)

Applicant is a 62-year-old systems analyst employed by a federal contractor since 1995. He has held security clearance with his current employer since at least 2003, and was granted his first clearance in 1985. He received a bachelor's of science degree in 1983. He and his former wife married in 1986, divorced in 1995, and have two adult children. (GX 1; GX 2.)

As part of Applicant's divorce decree, Applicant was entitled to claim the annual tax exemption for his daughter, on the condition that he remained current on his child support. (AX D; Tr. 30-33.) For tax years 2000 through 2010, Applicant was required to file an IRS child exemption form (Form 8332) with his tax return, which required Applicant's ex-wife's signature. Each year, Applicant mailed Form 8332 to his ex-wife who refused to sign and return it to Applicant, with the exception of tax year 2003. For tax years 2000 through 2002, and 2004 through 2010, Applicant thought that he was

receiving a tax refund, and that he could not file his returns without including the Form 8332. He also thought that filing the returns late could result in the forfeiture of his refund, but was not otherwise problematic. In late 2011 or early 2012, the IRS contacted Applicant about his unfiled returns. The IRS employee explained to Applicant that not only had Applicant failed to file his returns as required by law, but also that the IRS was filing a lien against him in the amount of \$35,549. (GX 3.)

Applicant again spoke to an IRS employee, who instructed Applicant to claim the child exemptions and file the returns without the supporting Form 8332s. The IRS employee and Applicant agreed that Applicant would: change his tax withholdings to zero; file all his late returns; timely file all future returns and pay any required taxes; make monthly payments; and, that any potential refund would be withheld by the IRS and applied to the tax lien. He filed all his late returns in 2011, and has timely filed his returns and paid any necessary taxes since 2012. (Tr. 63-64.)

Applicant saved money throughout 2013 with the intention of making a payment in December 2013. However, Applicant's car was stolen on Thanksgiving and he used the saved money for a down payment on a different vehicle. (Answer; AX F.) Applicant again saved money throughout 2014, but was diagnosed with cancer and needed the money for surgery. Nevertheless, in 2014, Applicant paid the \$4,280 tax debt owed for 2009. (GX 2.) He began consistently making monthly payments to the IRS in 2016. He is currently making monthly payments of \$800 by direct transfer from his personal bank account to the IRS. (Tr. 64.) As of January 2017, Applicant's balance owed for all remaining tax years was approximately \$21,750. He has paid his taxes owed for tax years 2000 through 2002, and 2009. He will increase his monthly payment amount as soon as his car is paid off later this year. He will complete repayment by the end of 2018. (AX L.)

Applicant has consistently received positive performance evaluations, and was promoted to a managerial position in 2016. (AX B.) Applicant's manager, who has worked with him for 19 years, and been his manager for over 10 years, states that Applicant "is well respected and trusted throughout the organization." Applicant's current director for the past 11 years, and has worked with Applicant since 1995, has "a tremendous amount of trust and confidence" in Applicant. Applicant's friend and colleague of over 17 years states that Applicant "as a person of high moral character and ethics." Each of Applicant's references describe him as a proud and dedicated father. (AX C.) Applicant has no other delinquent accounts and lives within his means. (GX 4; Tr. 64.) Applicant's testimony was straightforward, sincere, and credible.

### **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 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 or sensitive information.

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 testimony, corroborated by the record evidence, establishes three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(g) (“failure to file . . . annual Federal . . . income tax returns or failure to pay annual Federal . . . income tax 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(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's delinquent filing and paying of taxes initially arose as a result of his ex-wife's failure to sign the IRS's child exemption form as required. Because Applicant erroneously thought that he could not file his tax returns without the IRS Form 8332, he did not do so. This error was exacerbated by Applicant's mistaken belief that he was entitled to a tax refund for each of the years that he did not properly and timely file. However, once informed by the IRS in late 2011 or early 2012 of his errors and the impending tax lien, Applicant entered a repayment agreement that included changing his withholdings, filing all returns, timely filing future returns, and making monthly payments. Applicant agreed that all future refunds would be applied to the IRS lien. Despite the 2013 unanticipated cost of replacing his stolen vehicle, and the 2014 unanticipated expense of surgery for cancer, Applicant repaid his 2009 tax debt in 2014. He has been consistently making monthly payments since 2016, and has reduced his total tax debt by over \$14,000, with the remaining balance of about \$21,750, as of January 2017. He has satisfied his tax debt for tax years 2000 through 2002, and 2009 and will satisfy his remaining obligations.

"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). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant acted in good faith by entering a repayment plan with the IRS, which he has consistently maintained. Applicant's delinquent tax issues did not arise due to irresponsible or reckless spending, but rather initially arose due to his ex-wife's refusal to comply with IRS requirements. His ability to repay the taxes was further thwarted by the unanticipated expenses of the theft of his vehicle and his illness. Despite his initial misunderstanding of his tax-related obligations, he has since acted responsibly by filing all past returns, entering a repayment plan with the IRS, and timely filing and paying his taxes since 2012. His past tax-related issues do not cast out on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(d), and 20(g) 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(d):

(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(d) were addressed under that guideline, but I have also considered the following:

Applicant has worked in the defense industry since 1985. He is trusted and respected by his supervisors and coworkers, and has a reputation as a dedicated and proud father. He was straightforward, sincere, and credible in his testimony. I am confident that Applicant has learned from his mistakes and will continue to comply with the tax laws.

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 mitigated the potential security concerns raised by his failure to file and pay taxes. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge