



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-07324
)	
Applicant for Security Clearance)	

Appearances

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

03/23/2017

Decision

MARINE, Gina L., 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 (e-QIP) on November 12, 2014. On April 28, 2016, 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 June 1, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 24, 2016, and the case was assigned to Administrative Judge Paul J. Mason on October 19, 2016. On January 9, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 3, 2017. On January 31, 2017, Judge Mason transferred the case to me and I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Government's exhibit list was appended to the record as Hearing Exhibit (HE) I. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. At Applicant's request, I left the record open to March 3, 2017. Applicant timely provided additional documents that I admitted as AE E without objection.¹ DOHA received the transcript (Tr.) on February 13, 2017.

SOR Amendment

At the hearing, I granted Department Counsel's motion, without objection from Applicant, to amend the SOR to conform to Applicant's testimony at the hearing. I added ¶ 1.h to the SOR, as follows:

h. You failed to file or pay your federal tax returns, as required, for tax years 2010, 2011, and 2012."²

At hearing, after being offered additional time to respond to the new allegation SOR ¶ 1.h, Applicant admitted to the facts alleged therein.³

Findings of Fact⁴

Applicant, age 40, has never been married and has no children.⁵ He has been cohabitating with his girlfriend since 2014. He received his high school diploma in 1994. He honorably served in the U.S. Navy from 1994 through 1997.

Applicant is a security officer and has been employed full time since January 2016.⁶ He also works a part-time job on the weekends.⁷ Before that, he had been unemployed for about a year and a half following an unexpected layoff in January

¹ By email dated March 6, 2017, I requested that Applicant identify to which SOR allegation each document in AE E refers. I did not receive any response to that email. Accordingly, I have attributed each document in AE E to SOR allegations as appropriate given the context of the record.

² Tr. at 60-61. *See also* Tr. at 38.

³ Tr. at 61.

⁴ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and e-QIP (GE 1).

⁵ *See also* Tr. at 46.

⁶ Tr. at 25.

⁷ Tr. at 56. I left the record open, in part, to afford Applicant the opportunity to provide me with details about when he started this part-time position (Tr. at 55). However, he did not provide such information.

2013.⁸ He did not collect unemployment compensation during that period.⁹ Applicant currently maintains a secret clearance and has applied for an upgrade to top secret.¹⁰

In his SOR answer, Applicant admitted to each of the original seven SOR allegations totaling \$15,278. He attributes these debts to his layoff, which was the only time that he was ever unemployed since he separated from the Navy.¹¹

Applicant's landlord asked him to vacate his apartment after he told them that he was laid off and could not afford to pay the full amount of his rent. The outstanding balance that he owes to the landlord is \$6,557 (SOR ¶ 1.a). He plans to contact the landlord to discuss a settlement or payment plan. The debt is unresolved.¹²

Applicant fell behind in his payments on an automobile loan in the approximate amount of \$2,066 (SOR ¶ 1.b). He still maintains possession of this vehicle¹³ and made regular payments towards the balance due until it was paid off. This debt is resolved.¹⁴

Applicant fell behind in his payments on a personal loan in the approximate amount of \$2,731 (SOR ¶ 1.c). He has been making regular payments towards the balance due. There remains a balance of \$764 to be paid. This debt is in the process of being resolved.¹⁵

Applicant fell behind in the payments for his cell phone in the approximate amount of \$686 (SOR ¶ 1.d) and for another phone bill in the approximate amount of \$297 (SOR ¶ 1.e). He planned to pay these outstanding amounts in February 2017. However, both debts remain unresolved.¹⁶

State A obtained three judgments against Applicant for his failure to pay his taxes, in 2002 in the amount of \$2,173 (unalleged debt),¹⁷ in 2007 in the amount of

⁸ Tr. at 25-26, 31-32, 47-48. I left the record open, in part, to afford Applicant the opportunity to provide me with a timeline of his work history since he filled out his e-QIP (Tr. at 55). However, he did not provide such information.

⁹ Tr. at 32.

¹⁰ Tr. at 48.

¹¹ Tr. at 47.

¹² See also Tr. at 25-28.

¹³ However, he does not use this vehicle (Tr. at 47) as it remains parked (Tr. at 56).

¹⁴ Tr. at 28-30, AE E, GE 2 at p. 2, GE 3 at 6.

¹⁵ Tr. at 30-33; AE E at 10, GE 2 at p. 2, GE 3 at 5.

¹⁶ Tr. at 33-35.

¹⁷ AE E at 8. Since the Government did not allege this debt in the SOR, I will consider it only for the purpose of evaluating mitigation.

\$2,745 (SOR ¶ 1.g), and in 2012 in the amount of \$1,666 (SOR ¶ 1.f). Although the amount of \$1,196 is alleged in SOR ¶ 1.f, I find that the total amount of the judgment granted was \$1,666, including interest and penalties.¹⁸ The 2002 judgment was released in 2008.¹⁹ Applicant believes that he has paid the amounts owed to State A in full.²⁰ However, he has not provided any corroborating documents in support of his claim beyond a writ of garnishment issued in September 2016 to his employer in the amount of \$864,²¹ and an uncorroborated claim that he was paying \$300 a month for some undescribed period of time through his former employer.²² The 2007 and 2012 judgments remain unpaid.

In October 2016, State A certified that Applicant owed outstanding debt of \$4,669 to its Insurance Lapse and State Highway Administration agencies (unalleged debt),²³ and also stated its intent to intercept Applicant's state income tax refunds to apply toward that debt.²⁴ Applicant paid \$2,970 to State A for outstanding debt owed to the Insurance Lapse agency in 2008.²⁵ I cannot determine whether the information on pages 3 and 4 of AE E (\$2,970 debt) relates to the information in AE D (\$4,669 debt). However, for the purposes of evaluating mitigation, the discrepancy is not material. I find that Applicant owed non-tax related debt to State A and paid a portion of it.²⁶

Applicant failed to timely file and pay his federal and state taxes for tax years 2010 through 2012 (SOR ¶ 1.h).²⁷ He also owes unpaid taxes for tax years 2013 and 2014 (not alleged),²⁸ and failed to timely file his tax return for tax year 2007 (not

¹⁸ GE 5

¹⁹ AE E at 7.

²⁰ Tr. at 59.

²¹ AE B, AE C, Tr. at 39. Note that the information on the writ of garnishment (AE B and AE C) does not correlate to the information on either judgment (GE 4 and GE 5).

²² Tr. at 57.

²³ Since the Government did not allege this debt in the SOR, I will consider it only for the purpose of evaluating mitigation.

²⁴ AE D. At the hearing, Applicant claimed that the debts contained in AE D totaled \$1,196 and, therefore, related to SOR ¶ 1.f (Tr. at 43-46). However, the math adds up to \$4,669 and do not relate to unpaid tax debt so I do not find that AE D relates to SOR ¶ 1.f.

²⁵ AD E at 3-4.

²⁶ I also note that "Paid Conf#164754" is in handwriting on AE E at 5 (which is a statement that is also part of AE D). While Applicant did not provide any documents corroborating his payment, I consider it generally as stated.

²⁷ Tr. at 38, and 60-61.

²⁸ AE E at 6. Since the Government did not allege these tax years in the SOR, I will consider them only for the purpose of evaluating mitigation.

alleged).²⁹ Without providing any corroborating documentation, Applicant claims that he became current with his state and federal tax return filings in 2016.³⁰ Applicant entered into a five-year installment agreement to repay this debt at some point,³¹ which was revised in April 2016 to \$444 per month.³² Applicant did not provide any documents to corroborate any payments that he made pursuant to that agreement. He also did not provide any documents to corroborate the amount owed for these unpaid taxes, which he estimated to be approximately \$40,000.³³ Applicant attributes his failure to timely file and pay his taxes to being “young and ignorant” and not paying attention to them,³⁴ and gave no other compelling excuse or reason.³⁵ He acknowledged that he paid his taxes and used a tax service to assist with filing his taxes while he was in the Navy.³⁶

Applicant travelled to a foreign country in 2010, 2011, and 2013.³⁷ At the hearing, when asked how he financed these trips, Applicant responded “I can’t answer that.”³⁸ Applicant has not sought or received financial counseling.³⁹ Applicant earns approximately \$4,500 to \$5,000 after taxes each month from his two jobs.⁴⁰ From that, he pays one-half of the \$650 per month rent and also contributes, when asked, to the utility bills, the amount of which varies. He does not have any automobile expenses because he is presently using a family member’s car.⁴¹ Applicant expected to receive a “vacation cash-out” in February 2017 of approximately \$1,000 from which he planned to repay some of his delinquent debt.⁴² However, Applicant did not provide any evidence that he either received this sum or, if he did, that he used it to repay debt.

²⁹ Tr. at 58. Since the Government did not allege this tax year in the SOR, I will consider it only for the purpose of evaluating mitigation.

³⁰ Tr. at 58.

³¹ Tr. at 57. I left the record open, in part, to afford Applicant the opportunity to provide details about when he began this payment plan. However, he did not provide such information.

³² AE E at 6; Tr. at 38.

³³ Tr. at 38 and 57.

³⁴ Tr. at 35-36.

³⁵ Tr. at 61.

³⁶ Tr. at 36.

³⁷ Tr. at 49.

³⁸ Tr. at 49-50.

³⁹ Tr. at 50.

⁴⁰ Tr. at 50.

⁴¹ Tr. at 47 and 51.

⁴² Tr. at 33-34, and 51-52.

During his U.S. Navy service, Applicant earned a National Defense Service Medal, an Armed Forces Service Medal, an Armed Forces Expeditionary Medal, a SEA Service Deployment Ribbon, and a Navy Efficiency Ribbon.⁴³ Applicant has never been reprimanded for security breaches.⁴⁴

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.*

⁴³ AE A

⁴⁴ Tr. at 48.

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, corroborated by his credit bureau reports, establish two 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 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

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 has numerous delinquent debts that remain unresolved.

AG ¶ 20(b) is not established. Applicant's sudden job loss in 2013 was a circumstance beyond his control. However, Applicant has failed to meet his burden to show that he has acted responsibly to resolve his debt since then.

AG ¶ 20(c) is not established. Applicant has not received financial counseling. While Applicant has made some strides in tackling his delinquent debt, I cannot conclude that his financial problems are under control at this time.

AG ¶ 20(d) is not established. Applicant is credited with resolving the debt alleged in SOR ¶ 1.b, for paying a substantial sum towards the debt alleged in SOR ¶ 1.c, and for arranging an installment agreement with the IRS to resolve his delinquent tax debt. However, these efforts fall short of establishing AG ¶ 20(d) in light of the record as a whole.

Without any compelling excuse or reason to do so, Applicant failed to timely file and pay his federal taxes over a number of years, which reveals a deficiency in his good judgment, reliability, and trustworthiness. This conduct further calls into question his suitability for access to 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). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness and his failure to timely file and pay federal taxes. Accordingly, Applicant 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**

Subparagraph 1.a: **Against Applicant**

Subparagraphs 1.b – 1.c: **For Applicant**

Subparagraphs 1.d – 1.h: **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