



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-07237
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

10/27/2017

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 a security clearance application (SCA) on April 21, 2015. On September 29, 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, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on October 26, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on November 28, 2016. On December 1, 2016, a complete copy of the file of relevant material (FORM), consisting of Items 1 through 4, 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 December 8, 2016, and submitted Applicant's Exhibit (AX) A, which was admitted without objection. The case was assigned to me on October 1, 2017.

Findings of Fact²

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.g and denied the allegations in SOR ¶¶ 1.a-1.f, 1.h, and 1.i. His admission is incorporated in my findings of fact.

Applicant is a 51-year-old software developer employed by a defense contractor since August 2010. He earned a bachelor's degree in electrical engineering in May 1995. He married in October 1998, and he has an 18-year-old daughter and two stepsons, ages 32 and 34. He has worked for defense contractors since April 2005, except for a period of unemployment from October 2009 to January 2010. He has held a security clearance since January 2007.

The SOR alleges five delinquent credit-card accounts referred for collection of \$11,725 (SOR ¶ 1.a); \$9,758 (SOR ¶ 1.b); \$4,065 (SOR ¶ 1.c), \$1,782 (SOR ¶ 1.d); and \$9,462 (SOR ¶ 1.e), and a delinquent medical bill for \$1,347 (SOR ¶ 1.f). It also alleges that Applicant failed to timely file his federal income tax return for 2009 (SOR ¶ 1.g); and that he owed about \$6,229 in federal income taxes and \$2,294 in state income taxes for tax year 2012, but he did not begin making payments on them until 2015. (SOR ¶¶ 1.h and 1.i). The debts alleged in SOR ¶¶ 1.a-1.f are reflected in a credit report from May 2015. (Item 4.) He disclosed the federal and state tax delinquencies alleged in SOR ¶¶ 1.g-1.i in his SCA. (Item 2 at 40-41.)

Applicant's financial problems began when he was laid off in October 2009. He found work as an independent consultant in January 2010, earning about the same pay as he earned before being laid off. However, in August 2010, he became a direct-hire, full-time employee and took a 20% pay cut. Applicant and his wife sold the family home in a short sale in March 2011, but still could not generate enough income to pay their debts. He hired a debt-management company to assist him, but he terminated the contract after a short time because the company was not providing enough assistance to justify the fees it was charging. After the short sale, he neglected to adjust his tax withholding, and he had insufficient funds withheld to pay the federal income taxes due for tax year 2009 and the state income taxes for 2008.

² Applicant's personal information is extracted from his security clearance application (Item 2) unless otherwise indicated by a parenthetical citation to the record.

In Applicant's answer to the SOR, he denied the debts in SOR ¶¶ 1.a-1.c on the ground that they were charged off in October and November 2013, as reflected in pages 2-3 of an October 2016 credit report attached to his answer and the May 2015 credit report in the FORM (Item 4). He submitted no evidence that they were paid or otherwise resolved.

Applicant denied the debt alleged in SOR ¶ 1.d on the ground that it was paid. The October 2016 credit report attached to his answer reflects declining balances each month from October 2014 to April 2016 and reflects the status as "Paid. Closed. \$5,387 written off." This debt is resolved.

Applicant denied the debt alleged in SOR ¶ 1.e. He stated that he had not received any calls or letters about this debt "for years." The October 2016 credit report reflects that this account was charged off in March 2012 for \$9,462. He submitted no evidence that the debt was paid or otherwise resolved.

The medical debt alleged in SOR ¶ 1.f is reflected in the May 2015 and October 2016 credit reports as referred for collection of \$7,862. In Applicant's answer, he stated that the debt may have been paid off, but he submitted no documentary evidence of payment. It is not resolved.

Applicant admitted that he failed to timely file his federal income tax return for 2009, as alleged in SOR ¶ 1.g. He was unable to pay the full amount of the taxes due because of insufficient tax withholding during the year. He paid \$200 and received an extension until October 2010. He then forgot to file the return, because his attention was focused on dealing with other financial problems, including a short sale of the family residence that was completed in March 2011. After receiving a reminder from the IRS, he filed his federal return in September 2011.

Applicant denied the allegation in SOR ¶ 1.h that he did not begin making payments on his \$6,229 tax debt for 2012 until April 2015. The IRS tax transcript for 2012 reflected that Applicant owed about \$6,300, in addition to tax debts for earlier years. He made a payment agreement in June 2013 providing for monthly \$240 payments. The payments were applied to the oldest debt first, and they were not applied to the 2012 debt until June 2015, after the tax debts for previous years were paid.

Applicant also denied the allegation in SOR ¶ 1.i that he did not begin making payments on his \$2,294 state tax debt for 2012 until July 2015. The state tax records attached to his answer reflect that he made a payment agreement with the state and started making monthly \$100 payments to the state in June 2012. The payments were applied to the oldest tax year first (a tax debt for 2008), and the payments (which had increased to \$150 per month) were not applied to tax year 2012 until July 2015, after the tax debts for previous years were paid.

Applicant has not submitted any evidence of his current income and expenses. However, the federal tax transcripts attached to his SOR answer reflect that for tax year 2009, he and his wife filed a joint return and reported an adjusted gross income of \$137,867. They reported a joint adjusted gross income of \$160,432 for tax year 2012 and \$182,411 for tax year 2015. The record contains no information regarding other tax years.

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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

Analysis

Guideline F, Financial Considerations

The security 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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).

The evidence in the FORM is sufficient to establish the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and AG ¶ 19(f) ("failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required"). The following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to 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.

AG ¶¶ 20(a) and 20(c) are not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. He hired a debt management company for a short time, but there is no evidence that he received the type of financial counseling contemplated by AG ¶ 20(c).

AG ¶¶ 20(b) and 20(d) are established for the credit-card debt alleged in SOR ¶ 1.d and the tax debts alleged in SOR ¶¶ 1.h and 1.i. Applicant's periods of unemployment and a subsequent pay reduction were conditions largely beyond his control. He made regular payments and eventually resolved the debt alleged in SOR ¶ 1.d. He is making regular payments on the tax debts. However, he submitted no evidence of responsible conduct regarding the debts alleged in SOR ¶¶ 1.a-1.c, 1.e, and 1.f.

AG ¶ 20(g) is established for the untimely federal income tax return for 2009, alleged in SOR ¶ 1.g, and the tax debts alleged SOR ¶¶ 1.h and 1.i. He filed the 2009 federal return in September 2011. He made payment agreements for the delinquent federal and state tax debts alleged in SOR ¶¶ 1.h and 1.i, and he has complied with them.

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, all relevant circumstances, and the adjudicative factors in AG ¶ 2(d).³

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered that Applicant has worked for defense contractors and held a security clearance for many years, apparently without incident. Because he 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 delinquent debts.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant
Subparagraphs 1.g-1.i:	For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge

³ The factors are: (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.