



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



In the matter of:)	
)	
-----)	ISCR Case No. 16-00040
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2018

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He owes approximately \$170,000 in back taxes to state and federal tax authorities for multiple tax years. His history of financial problems also includes multiple collection and charged-off accounts. It is far too soon to tell if he will be able to make any meaningful progress in addressing his delinquent debts. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on October 11, 2014.¹ This document is commonly known as a security clearance application. Thereafter, on April 5, 2016, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was

¹ Exhibit 1.

clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on November 16, 2016. He admitted the SOR allegations except for a single \$112 collection account in SOR ¶ 1.j, and he requested a hearing before an administrative judge.

The case was initially assigned to me on June 17, 2016, and assigned to me again on October 13, 2017. The hearing was scheduled to occur first in September 2016 and then in March 2018, but did not.² In due course, the hearing took place on May 30, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-5. Applicant did not offer any documentary exhibits and he relied on his own testimony. The hearing transcript (Tr.) was received on June 8, 2018.

Procedural Matters

Department Counsel amended the SOR, in writing, on October 16, 2017, by adding 13 additional factual allegations under Guideline F. Applicant admitted the additional allegations on November 9, 2017. As amended, under Guideline F, the SOR contains factual allegations as set forth in ¶¶ 1.a – 1.hhh.

Findings of Fact

Applicant is a 40-year-old employee who is seeking to retain a security clearance previously granted to him in 2004. He has been consistently employed throughout his adulthood.³ He requires a clearance for part-time work as a consultant in the field of software engineering. The consulting work is in addition to his regular full-time employment for which he earns about \$150,000 annually.⁴ His first marriage ended in divorce in 2012, although he and his then wife separated in 2010 or 2011.⁵ He currently lives with his fiancée. He is the father of six children, ages 18, 17, 15, 14, 2 and 6 months. The four teenagers are from his first marriage, and the two young children are from his current relationship. Per the divorce, he was ordered to pay alimony (spousal support) of \$1,900 monthly for five years ending in about January 2017; and he was ordered to pay child support of \$2,400 monthly, although it was recently reduced to \$1,900 monthly.⁶

² The chronology of events concerning scheduling was set forth at the start of the hearing. Tr. 17-19.

³ Tr. 39.

⁴ Tr. 30.

⁵ Tr. 34.

⁶ Tr. 34-36.

Applicant does not dispute his history of financial problems.⁷ In his October 2014 security clearance application, he disclosed back taxes for 2011 and 2012 and a \$9,000 collection account stemming from an automobile repossession.⁸ The SOR, as amended, alleges, and he admits, and the documentary evidence shows the following derogatory financial matters: (1) four federal tax liens filed in 2013, 2014, and 2016 for \$29,064, \$20,711, \$12,544, and \$3,155; (2) six state tax liens filed in 2009, 2010, 2011, and 2016 for \$11,681, \$1,459, \$5,645, \$5,274, \$6,089, and \$10,685; (3) five consumer accounts for \$20,174, and (4) 45 medical collection accounts for various amounts.⁹

At the hearing, Applicant estimated that he now owes the state tax authority \$50,000 and the IRS \$121,000.¹⁰ He stated, without supporting paperwork, that the IRS placed his account in currently-not-collectible status, because they concluded that he cannot afford to repay the debt, and attempting to repay would create an economic hardship on him.¹¹ Likewise, he stated, without supporting paperwork, that the state tax authority advised him to address the federal taxes first and then go from there.¹² In summary, Applicant did not present any documentation to establish that the back taxes, the delinquent consumer accounts, or the medical collection accounts were paid, settled, in a payment arrangement, cancelled, forgiven, or otherwise resolved.

Applicant attributes his financial problems to his 2012 divorce and the resulting alimony and child support payments imposed on him.¹³ He chose to focus on meeting those obligations, which he says he has, and that resulted in falling behind on other financial obligations. He incurred the back taxes when, following a friend's advice, he elected to claim more exemptions than he was due, which resulted in the under withholding of income taxes from his paycheck.¹⁴ He stated that his fiancée is a good influence on him concerning how he handles financial matters.¹⁵ He stated he has no investment or retirement accounts.¹⁶ Asked whether he had any money in the bank, he stated "not really."¹⁷

⁷ Tr. 26-28.

⁸ Exhibit 1.

⁹ Exhibits 2-5.

¹⁰ Tr. 41.

¹¹ Tr. 31-32.

¹² Tr. 32.

¹³ Tr. 26-28.

¹⁴ Tr. 32-34.

¹⁵ Tr. 43-44.

¹⁶ Tr. 45.

¹⁷ Tr. 44.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.¹⁸

It is well-established law that no one has a right to a security clearance.¹⁹ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁰ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²¹ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²²

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²³ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.²⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.²⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

¹⁸ The 2017 AG are available at <http://ogc.osd.mil/doha>.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁰ 484 U.S. at 531.

²¹ 484 U.S. at 531.

²² ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²³ Directive, ¶ 3.2.

²⁴ Directive, ¶ 3.2.

²⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁶ Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.²⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²⁸

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

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 or sensitive information. . .²⁹

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations;

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;

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; and

²⁷ Directive, Enclosure 3, ¶ E3.1.15.

²⁸ Directive, Enclosure 3, ¶ E3.1.15.

²⁹ AG ¶ 18.

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.

The evidence supports a conclusion that Applicant has a problematic financial history sufficient to raise a security concern under Guideline F. That history is well established by his failure to pay tax when due as well as his failure to meet his financial obligations as reflected by the delinquent consumer accounts and the numerous medical collection accounts. He now owes, by his own estimate, about \$170,000 in back taxes to state and federal tax authorities.

Accepting that the federal back taxes are in currently-not-collectible status, it simply means the IRS has temporarily closed Applicant's collection case and he does not have to pay the money he owes at this time, but the back taxes were not cancelled or forgiven by the IRS. Given these circumstances, the mitigating condition at AG ¶ 20(g) does not apply in Applicant's favor because he is not in a payment arrangement with either the state or the IRS. In addition, I considered the mitigating condition at AG ¶ 20(b), but it does not apply in Applicant's favor. Without doubt, his 2012 divorce and the resulting alimony and child support obligations created a demanding financial situation, which he says he has met. With that said, I note that some of the state tax liens were filed in 2009, 2010, and 2011, which was before the 2012 divorce. His focus on his support obligations is laudable, but he did so at the expense of other lawful financial obligations, including his income tax obligations. In other words, he did not act responsibly under the circumstances.

The failure to pay tax when due bears close examination and is a matter of serious concern to the federal government.³⁰ The nexus or security significance between Applicant's financial history and his eligibility for access to classified information was explained by the Appeal Board as follows:

Security requirements include consideration of a person's judgment, reliability, and a sense of [their] legal obligations. Failure to comply with federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information.³¹

That is the situation here. Applicant did not voluntarily comply with his lawful obligation to pay his income taxes when due. Indeed, he essentially did so on purpose, by claiming an excessive number of exemptions and under withholding of income taxes from his paycheck. This is a serious concern because his failure to comply with federal

³⁰ The General Accountability Office (GAO) expressed serious concern over the relationship between tax delinquents and clearance holders in its July 28, 2014 report, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, <http://www.gao.gov/assets/670/665052.pdf>.

³¹ ISCR Case No. 14-00221 (App. Bd. Jun. 29, 2016) at 4 (citations omitted).

and state tax law may easily carry over into lapses in the serious business of properly handling and safeguarding classified information.

To sum up, it is far too soon to tell if Applicant will be able to make any meaningful progress in addressing his delinquent debts, which includes a mountain of back taxes. His history of tax problems reflects a pattern of irresponsibility, lack of judgment, or unwillingness to abide by rules and regulations. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Nevertheless, I conclude that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a -- 1.hhh:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant access to classified information.

Michael H. Leonard
Administrative Judge