



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-01131  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2018

**Decision**

CERVI, Gregg A., 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 August 27, 2015. On July 4, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F.<sup>1</sup>

Applicant responded to the SOR on July 8, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on March 8, 2017, and the hearing was convened on April 4, 2017. Government

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<sup>1</sup> 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 the DOD on September 1, 2006.

Exhibits (GE) 1 through 6 were admitted in evidence. Applicant testified and, after the hearing, submitted exhibits that were marked and admitted as (AE) A. DOHA received the hearing transcript (Tr.) on April 13, 2017.

### **Findings of Fact**

Applicant is a 61-year-old systems and software engineer employed by a defense contractor since May 2016. He was previously employed with another contractor from October 2015 to May 2016. He was unemployed from August to October 2015 and September 2013 to July 2014; and he did not receive payment due to him for work he performed in 2009. He was awarded a master's degree in business administration in 1987. He is currently unmarried, and was previously divorced in 1998 and 2006. He has two adult children. He previously held a DOD security clearance and public trust position.

The SOR alleges 16 delinquent debts totaling over \$143,000, including about \$138,000 in delinquent Federal and state tax debts. In addition, he is alleged to have failed to file his 2009 Federal income tax return. Applicant admitted the Federal tax delinquencies, but denied the debts owed to a state tax authority and the remaining debts alleged in the SOR. He also claimed he filed his 2009 Federal income tax return despite the allegation to the contrary. No evidence was presented to support the allegation in SOR ¶ 1.q, and is resolved in Applicant's favor.

Applicant asserted that he has filed all Federal income tax returns and is currently up-to-date. He failed to pay Federal income taxes owed from 2006 to 2008 because he invested a total of \$200,000 in overseas mortgage-backed securities that failed to pay the expected return. This resulted in the IRS filing tax liens in 2007, 2008, and 2009. Applicant's substantial investment losses were not deductible since they were incurred from an overseas investment. As a result, he did not have sufficient money to pay his taxes when due.

In 2013, Applicant sought advice from a tax-relief attorney, but disagreed with the cost of service after consulting her, and disputed a charge made on his credit card. The account is currently in a collection status (SOR ¶ 1.p) for \$1,002. He timely notified the attorney and disputed the charge with his credit card company. Applicant also sought the assistance from a professional tax advocate, who determined that, as of 2014, he owed \$158,687 in unpaid taxes, interest, and penalties to the IRS. After the IRS involuntarily recovered about \$16,000 from his bank account and withholding income tax refunds, his IRS debt was placed in a "currently not collectable" (CNC) status. A CNC designation is not a permanent status, but is reviewed by the IRS as a taxpayer's income status changes. Applicant stated his intent not to file an offer-in-compromise to resolve his debts as they are currently uncollectable, and he can allow the statute of limitations to expire in order to avoid paying anything further.

In 2013, Applicant suffered two heart attacks. His employer's health insurance plan paid the majority of the medical bills, but he incurred several small charges that he did not pay. The debts appear on his credit report as unpaid and in a collection status. (SOR

¶¶ 1.h – 1.o) Applicant disputed these debts in his answer to the SOR and after issuance of the SOR, sent letters of dispute to the respective creditor. He largely claimed in his answer that he was unaware of amounts owed to an ambulance company and hospital, however during the hearing, he acknowledged the debts and stated he would pay them. He also disputed debts owed to collection companies for phone and credit card accounts after issuance of the SOR. (SOR ¶¶ 1.f – 1.g) No documentary evidence of good faith payments, answers to written disputes, or other debt resolution solutions were submitted.

A state tax authority filed tax liens in 2008 and 2010 for unpaid income taxes. Applicant testified that he paid the tax debts through state tax refund withholdings. After the hearing, Applicant inquired with the state tax authority and provided evidence that the state tax liens were issued in error, and withdrawn.

Applicant submitted a personal financial statement with his answer to the SOR, showing a salary of about \$75,000 (2016), a monthly net remainder of \$709, and an IRA valued at \$14,000. Applicant testified that his current income is about \$85,000 and his IRA is worth about \$6,500. He received financial counseling in 2016. A counseling report submitted with his answer to the SOR showed a surplus income of \$2,200; however, at the hearing, he admitted that the surplus was largely applied toward additional expenses. In 2004, Applicant filed Chapter 7 bankruptcy, claiming liabilities of \$343,189. The bankruptcy was discharged in October 2004.<sup>2</sup>

### **Policies**

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

“[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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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<sup>2</sup> The bankruptcy was not alleged in the SOR, but may be considered when evaluating Applicant’s history of financial responsibility and in the whole-person analysis.

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 ¶ 1(d).

## **Analysis**

### **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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant's admissions, testimony, and the documentary evidence are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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;
- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant's delinquent debts are recent and numerous, and there is insufficient evidence to determine that they were incurred under circumstances making them unlikely to recur. Applicant claims he has insufficient income to pay his debts, and has chosen to allow his IRS debts to remain unpaid. He lost income due to periods of unemployment and the failure of an employer to pay him in 2009, but his IRS debts were largely incurred from poor investments of funds he needed to pay income tax obligations. In addition, he

has not shown that he has satisfactorily resolved the remaining medical, phone, and credit card debts, despite his assertions during the hearing.

Applicant has a long history of financial irresponsibility, and had significant debt discharged in 2004 through bankruptcy. Despite a recently steady employment history, he did not responsibly address his delinquent debts and failed to show an intent to fully resolve his Federal tax obligations. He obtained advice from professionals in an attempt to resolve his tax debts, but has not taken satisfactory action to resolve them after finding steady employment in 2015. He also received credit counseling in 2016, but his budget figures were controverted at the hearing. I find no mitigating condition fully applies except that Applicant's state tax debts were resolved, and his debt with a tax relief attorney has been legitimately disputed. His controverted medical and credit-card debts were not shown to be legitimately disputed or otherwise resolved. No evidence was presented to show that Applicant failed to file his 2009 Federal tax return, and Applicant refuted the allegation.

Overall, Applicant's unresolved debts, especially his delinquent Federal tax obligations and the circumstances in which they were incurred, reflect poorly on his financial management decisions and personal financial responsibility. His finances are in a precarious position due to a lack of funds to pay debts, despite being steadily employed since October 2015. His financial stability, decisions, and financial integrity raise significant concerns. I am not convinced Applicant is financially responsible, makes good financial decisions, or is currently financially stable. These factors do not demonstrate the high degree of judgment and reliability required for access to classified information.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant has not shown that he is now financially stable and able to adequately address his past financial delinquencies. Additionally, his decisions with regard to investing money in risky investments instead of paying Federal tax obligations, demonstrate a lack of financial responsibility. Despite his steady employment since 2015, he has not adequately addressed his delinquencies. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a, 1.d, 1.p, and 1.q:	For Applicant
Subparagraphs 1.b, 1.c, 1.e – 1.o:	Against Applicant

### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge