



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 16-01950  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

11/30/2017

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**Decision**

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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 on June 4, 2015. On January 6, 2017, 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 the DOD on September 1, 2006.<sup>1</sup>

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<sup>1</sup> Security Executive Agent Directive 4 (SEAD 4) was issued on December 10, 2016, revising the 2006 adjudicative guidelines for 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 April 1, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 24, 2017, and the case was assigned to an administrative judge on June 13, 2017. It was reassigned to me on August 3, 2017, because of workload. On August 16, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 13, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until October 13, 2017, to enable him to submit documentary evidence. He did not submit anything further. DOHA received the transcript (Tr.) on September 22, 2017.

### **Findings of Fact<sup>2</sup>**

In Applicant's answer to the SOR, he admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 51-year-old electronics technician employed by a federal contractor since December 2012. He was employed by another federal contractor from August 2008 to June 2010. He served on active duty in the U.S. Marine Corps from October 1984 to October 1988 and received an honorable discharge. He has never held a security clearance. He applied for a security clearance in 2010, but it was denied because of his financial problems. (Tr. 7, 15-16.)

Applicant married in February 1987 and divorced in April 2006. He has two adult children. He graduated from high school in 1984 and has about two years of college but no degree. (Tr. 17.)

Until recently, Applicant's take-home pay every two weeks was about \$1,800. He recently was promoted and his pay was increased from \$18 per hour to \$24 per hour. He normally works about 50 hours per week. He has about \$7,000 in savings and a balance of about \$2,000 in a checking account. He has a retirement account, but he does not know how much is in the account. (Tr. 21-23.) He has a net monthly remainder of \$500-\$700 after paying all expenses. (Tr. 26.)

Applicant filed a petition for Chapter 7 bankruptcy in April 2013 and all dischargeable debts were discharged in August 2013. (GX 4.) After his bankruptcy discharge, the IRS released all liens and terminated collection action for delinquent federal income taxes for tax years 1997 through 2002, totaling about \$36,955.

Applicant's federal tax debt arose when he did not file income tax returns from 1997 through 2003, because he could not afford to pay the taxes due. (Tr. 29.) He testified that he hired an accountant and filed his tax returns for 2004 and 2005 in 2008, and has

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<sup>2</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

timely filed all his federal income tax returns since 2008. (Tr. 30-31.) However, he submitted no documentary evidence to corroborate his testimony. In his answer to the SOR, he admitted that he owed about \$3,371 for tax year 2003; \$4,343 for 2004; \$3,001 for 2005; \$3,927 for 2006; \$2,006 for 2007; and \$809 for 2008. He also admitted that the IRS filed a tax lien against him for \$10,542 for tax years 2003 and 2004, and that the lien is unsatisfied. At the hearing, he testified that he contacted the IRS in 2013, made a payment agreement, and is making regular payments of at least \$100, but he submitted no documentation of a payment agreement or any payments. (Tr. 34-36.)

### **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 SOR alleges that Applicant filed a Chapter 7 bankruptcy petition in April 2013 and that all dischargeable debts were discharged in August 2013 (SOR ¶ 1.a). It also alleges that after his debts were discharged, the Internal Revenue Service (IRS) released all tax liens and terminated collection action for delinquent taxes for 1997 through 2002, totaling about \$36,955 (SOR ¶ 1.b). It further alleges that he is indebted to the IRS for about \$3,371 for tax year 2003; \$4,343 for 2004; \$3,001 for 2005; \$3,927 for 2006; \$2,006 for 2007; and \$809 for 2008 (SOR ¶¶ 1.c-1.h). Finally, it alleges that the IRS filed a tax lien against him in December 2008 for about \$10,542 for tax years 2003 and 2004 (SOR ¶ 1.i).

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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 tax lien alleged in SOR ¶ 1.i is for the same delinquent taxes alleged in SOR ¶¶ 1.c and 1.d. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved SOR ¶¶ 1.c and 1.d in Applicant's favor.

Applicant's admissions establish the following disqualifying conditions: 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 relevant:

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;

AG ¶ 20(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; 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.

None of the mitigating conditions are established. Applicant's tax debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. He submitted no evidence of conditions beyond his control or financial counseling. He claimed that he had filed his past-due returns, entered into a payment agreement for his delinquent taxes, and was making regular payments, but he provided no documentary evidence to support his claims, even though he was given an additional 30 days to submit such evidence. It is reasonable to expect an applicant to present documentary evidence showing resolution of specific debts. *See, e.g.,* ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

### **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 and applying the adjudicative factors in AG ¶ 2(d).<sup>3</sup> 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 Applicant's honorable military service and his service as an employee of federal contractors. 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 failures to timely file his federal income tax returns and his failure to resolve his current federal tax debt.

### **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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.i:	Against Applicant

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<sup>3</sup> 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.

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge