



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 16-02613
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2017

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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 granted.

**Statement of the Case**

Applicant submitted a security clearance application on October 29, 2013. On September 30, 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.<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. 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 29, 2016, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on December 8, 2016, and a complete copy of the file of relevant material (FORM), consisting of Items 1 through 7, 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 15, 2016, and submitted additional evidence, which was included in the record without objection as Applicant's Exhibit (AX) A. The case was assigned to me on October 1, 2017.

The FORM included Item 7, a summary of a personal subject interview (PSI) conducted on February 3, 2016. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the PSI summary, nor did he object to it. I conclude that he waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

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

The SOR alleges a delinquent mortgage loan that is past due for about \$27,209 (SOR ¶ 1.a) and six tax liens filed against Applicant in August 2014, January 2005, and July 2000 for delinquent state taxes (SOR ¶¶ 1.b-1.g). In Applicant's answer to the SOR, Applicant denied all the allegations.

Applicant is a 67-year-old program manager employed by a defense contractor since January 1993. He enlisted in the U.S. Air Force in December 1970, was commissioned as an officer in 1982, and retired in January 1993. He has held a security clearance continuously since 1971, apparently without incident. He received a bachelor's degree in electrical engineering in April 1992 by participating in the Air Force Airman Education and Commissioning Program. He married in August 1975, divorced in November 2006, and married his current spouse in June 2012. He has a 35-year-old son and a 26-year-old stepson.

Applicant's problems with the mortgage loan began in August 2013, when he renewed and paid the premium for his homeowner's insurance. At about the same time, the lender transferred the loan servicing function to another entity. The lender received notice of the insurance renewal but the information apparently was not received by the loan servicer. Without notifying Applicant, the loan servicer obtained homeowner's insurance for him, established an escrow account for insurance premiums, and added the escrow payments to the loan payments, increasing them from \$999 to \$1,139.

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

The loan servicer also asked Applicant to execute a new authorization for an automatic debit authorization. He told the loan servicer that he was unable to obtain and return the debit authorization until April 2014 because of work-related travel. In order to keep the payments current, he paid the loan servicer \$4,417 to bring the account up to date through April 2014, and he asked for an accounting to make sure that he was paying the correct amount. When he returned, he found that the \$4,417 payment had been processed correctly, but his request for an accounting had not been granted and the debit authorization had not been processed. In June 2014, he received a check from the lender for \$943, which he interpreted to mean that a payment had been returned. The loan servicer later acknowledged that the payment was returned because it was not sufficient to reinstate the loan, which its records reflected as delinquent. In August 2014, the loan was referred for foreclosure. In October 2014, Applicant hired an attorney to help him with the dispute. In the meantime, he sent monthly faxes to the lender inquiring about resolution of the dispute.

In June 2015, Applicant offered to send a check for \$12,569 to cover the payments for May 2014 to May 2015. His offer was not accepted. However, he received a letter from the lender requesting that he complete a financial disclosure form and other forms related to a short sale. He found this request confusing because he had never discussed a short sale with the lender. In July 2015, the lender sent him a notice of default and informed him that he could cure the default by paying \$17,186 by August 27, 2015. The August 2015 credit report in the FORM reflected that his payments were past due for \$14,989. (Item 3 at 7.) In September 2015, he offered to send a check for \$16,566 to cover the payments for May 2014 through September 2015. In November 2015, he was notified by the lender that the amount of his monthly payment had been corrected and his loan returned to a non-escrow status.

In January 2016, Applicant received a letter from a collection attorney for the lender, advising him that he owed \$118,802. He told the collection attorney that he disputed the debt, and the attorney acknowledged his response.

The June 2016 credit report reflected that Applicant's mortgage-loan payments were past due for about \$27,209, the amount alleged in SOR ¶ 1.a. (Item 4 at 1.) In July 2016, Applicant received a letter from the loan servicer, acknowledging that it had erroneously increased his payments from \$999 to \$1,139. The December 2016 credit report reflected that Applicant's scheduled payment was \$999, but that the past due amount was \$30,975. (Item 5 at 3.) In Applicant's January 2017 response to the FORM, he stated that his attorney had been contacted by an attorney for the loan servicer, who had offered to cancel the excess charges and late fees, but the agreement had not been finalized. (Item 8.)

Applicant first discovered that he had problems with the state tax authority in September 2013, when he was notified of a tax issue, the details of which are not reflected in the record. He sent the state tax authority copies of his state returns for 2002 through 2011. He was notified that he owed taxes for 2004, to be offset against his refund for 2012, for which he had not yet filed. At about the same time, he was notified

that he was entitled to an additional refund for 2005. He eventually sent copies of his returns for 1999 through 2015 to the state tax authority.

In August 2014, six state tax liens were filed against Applicant for \$653, \$687, \$653, \$687, \$582, and \$3,337. These liens were reflected in the August 2015 credit report, included as Item 3 in the FORM. The June 2015 credit report (Item 4) and the December 2016 credit report (Item 5) reflected four tax liens filed in August 2014 for \$687, \$653, \$582, and \$3,337. The four tax liens are alleged in SOR ¶¶ 1.b-1.e. The public records for Applicant's county of residence reflect three additional tax liens: a lien for \$1,311 filed in February 2005; a lien for \$567 filed in July 2000; and a lien for \$3,064 filed in 1995, which was released. (Item 6.) The two unsatisfied liens are alleged in SOR ¶¶ 1.f and 1.g.

In November 2014, Applicant was notified that he owed additional taxes for 2004, 2005, and 2008, and he sent checks for the amounts due (\$105 for 2004; \$93 for 2005; and \$30 for 2008). In July 2015, he received a letter from the state attorney general's office, informing him that he owed \$2,654, but not providing any details regarding the years for which he owed taxes or the reason that his previous payments were not sufficient. He sent a fax to the attorney general's office, asking for clarification, but he received no response.

In August and September 2015, Applicant contacted his representative in the state legislature and asked for help. In October 2015, his representative notified him that he had contacted the attorney general's office. A member of the attorney general's office contacted Applicant and informed him that they were investigating the issue. In November 2015, Applicant was notified of another tax refund offset for an unspecified year. As of the date of Applicant's January 2017 response to the FORM, the state tax issues had not been resolved, although he stated that he received a refund for 2005. (Item 8.)

## **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. . . .

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 documentary evidence in the FORM is sufficient to raise three 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 relevant mitigating condition is 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"). This mitigating condition is established. Applicant's voluminous response to the SOR, supplemented by his response to the FORM, is sufficient to provide documented proof of a reasonable basis to dispute all the debts alleged in the SOR.

### **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 long record of service in the U.S. Air Force and as an employee of a defense contractor. He has held a security clearance for 46 years, apparently without incident. Because he requested a determination on the record without a hearing, I had no opportunity to

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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.

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 mitigated the security concerns raised by the financial delinquencies alleged in the SOR.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):                      FOR APPLICANT

Subparagraphs 1.a-1.g:    For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman  
Administrative Judge