



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-01858
)	
Applicant for Security Clearance)	

Appearances

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

02/27/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application on May 31, 2016. On August 28, 2017, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (EO) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all decisions on or after June 8, 2017.

Applicant answered the SOR on September 14, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on October 17, 2017. On October 17, 2017, a complete copy of the file of relevant

material (FORM) 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 October 24, 2017, and submitted additional evidence, which was admitted without objection as Applicant's Exhibit (AX) A. The case was assigned to me on February 12, 2018.

Findings of Fact¹

Applicant admitted the sole the allegation in the SOR. His admission is incorporated into my findings of fact.

Applicant is a 47-year-old quality assurance lead employed by a defense contractor since May 2016, and he requires a security clearance for this employment. He was previously granted a DoD clearance in approximately 2000. Applicant and his wife have been married since 2002, and he has two adult stepchildren. Applicant earned master's degrees in 2002 and in 2007. He was the sole proprietor of a small company between approximately 2007 and 2015.

SOR ¶ 1.a. alleges a federal tax lien entered against Applicant in 2014, in the amount of \$31,819. Applicant failed to make two quarterly payments in 2007 and 2008 toward his federal employee withholding taxes. These missed payments occurred during his first six months as a sole proprietor of a small business (Item 3).

In 2014, Applicant made a lump sum payment to the IRS of approximately \$10,000 toward his 2007 taxes and then set up a payment plan for \$600 a month (Item 3 at 67; Item 4 at 9; AX A). With his Answer, Applicant provided documentation reflecting a second lump sum payment to the IRS in the amount of \$20,144.75. Applicant also provided a Certificate of Release of Federal Tax Lien (Item 2).

Policies

"[N]o one has a 'right' to a security clearance."² 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."³ 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."⁴

¹ Applicant's personal information is extracted from his security application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³ *Egan* at 527.

⁴ EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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."⁵ 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.⁶ "Substantial evidence" is "more than a scintilla but less than a preponderance."⁷ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.⁸ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁹ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁰

⁵ EO 10865 § 7.

⁶ See *Egan*, 484 U.S. at 531.

⁷ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁸ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

⁹ Directive ¶ E3.1.15.

¹⁰ 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.”¹¹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹²

Analysis

The concern under Guideline F (Financial Considerations) 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.¹³

Applicant's admissions and the documentary evidence in the FORM establish three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), 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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

¹¹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹² *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

¹³ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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) is established. The lien alleged in SOR ¶ 1.a. was filed in 2014, for debt obligations from 2007 and 2008. Applicant's debt is not recent, unlikely to recur, and isolated.

AG ¶ 20(d) is established. Applicant provided documentation that he has paid his outstanding tax debt. In 2014, Applicant made a \$10,000 lump sum payment to the IRS and set up a payment plan of \$600 per month, demonstrating a good-faith effort to resolve his debt.

AG ¶ 20(g) is established. Approximately two years prior to his application for a DoD security clearance, Applicant started making payments to the IRS. Additionally, he paid the remaining lien balance on September 20, 2017, less than one month after the SOR was issued, and the lien was released. There is no evidence of additional debt or tax issues.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his failure to pay his delinquent debt. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national security interest of the United States to grant him eligibility for access to classified information.

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.: For Applicant

Conclusion

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

Caroline E. Heintzelman
Administrative Judge