DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-02153
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2018

Decision

HESS, Stephanie C., Administrative Judge:

Applicant did not mitigate the security concerns raised under Guideline F (Financial Considerations). Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 23, 2016. On June 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 (E.O.) 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 DOD on June 8, 2017.

Applicant answered the SOR on July 17, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 6, 2017. On that same day, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, 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 September 19, 2017, and filed a Response within the allotted 30 days. The case was assigned to me on January 16, 2018.

Findings of Fact

Under Guideline F, the SOR alleges that Applicant is indebted to the Federal Government for a 2012 tax lien of $21,834, and for a 2014 judgment in the amount of $61,744. Applicant denies the tax lien, stating it was satisfied in 2017. He admits that the judgment is still outstanding, and explains the circumstances of the debt. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from June 2017, December 2016, and September 2017, and discussed on his e-QIP and during his personal subject interview (PSI). (GX 5; GX 4; Answer; GX 2; GX 3.) Applicant's admissions are incorporated in my findings of fact.

Applicant is a 53-year-old program manager currently working for a defense contractor since October 2010. This is his first application for a security clearance. He and his wife married in 2013. (GX 2.)

Applicant did not timely file or pay his 2005 taxes due to periods of unemployment and underemployment. From 2006 until January 2010, Applicant paid approximately $799 a month to the Internal Revenue Service (IRS) towards his tax debt. Due to a ten-month period of unemployment which began in January 2010, Applicant was unable to continue his tax-debt payments. The IRS entered a lien against Applicant for $21,834 in April 2012 (SOR ¶ 1.a). At some point, Applicant entered an Offer in Compromise agreement with the IRS, and in November 2014, began making payments on this debt of approximately $600 a month. The debt was satisfied in June 2017. (Answer.) Applicant contacted the IRS and the major credit reporting agencies in an effort to have the lien removed from his credit reports. (Response.)

In approximately 2005, Applicant entered an agreement to purchase a used-car dealership from his father for $300,000. Applicant was the president of the dealership from 2005 until it closed in January 2010, and made periodic payments to his father during that time, which Applicant states totaled $430,000. When the dealership closed, due to the 2008 economic downturn, Applicant's father claimed Applicant still owed $100,000 for the business. (GX 3.) In April 2014, Applicant's father was awarded a $61,744 judgment against Applicant. Although Applicant has discussed settlement with his father, the judgment remains outstanding. Since the judgment was entered, Applicant has moved to another state, and Applicant's father has not yet domesticated the judgment in Applicant's current state of residence. According to Applicant:

> The statute of limitations for collections on the judgment will run out in 2021. In the meantime, should one be brought against me in [my current state of residence], I will address it at that time and eventually expect to finally negotiate a settlement with my father. (Answer.)

Applicant considers the judgment to be “a disputed action,” and does not intend to pay it. (GX 2; GX 3.) Applicant states that his financial circumstances at the time the judgment was entered against him in 2014, prevented him from being able to properly defend the case. However, Applicant has not provided any documentary evidence substantiating the legitimacy of his dispute or records of payments made to his father.

Applicant is current on his ongoing financial obligations. His September 2017 CBR shows that he financed a vehicle loan in April 2017 for $34,451 and that he had $16,380 in credit-card balances. (Answer.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” *See* 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 ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

> 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. . . . An individual who is financially overextended is at risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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 record evidence establishes three disqualifying conditions under this guideline: 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 pay annual Federal… 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(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(d): 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.

Due to conditions largely beyond his control, specifically periods of unemployment and underemployment, Applicant failed to timely file and pay his 2005 Federal taxes. He initially acted responsibly by entering a repayment plan with the IRS. During a second period of unemployment in 2010, Applicant was unable to continue the payments, and the IRS entered a lien against him in 2012 for $21,834 (SOR ¶ 1.a). In 2014, Applicant entered an Offer in Compromise agreement with the IRS, and made monthly payments on the lien. He satisfied the agreement in June 2017, and the lien was released. AG ¶¶ 20(a), 20(b), 20(d), 20(e), and 20(g) apply to this allegation.

Applicant attributes the closing of the used-car dealership to conditions largely beyond his control, specifically the 2008 economic downturn. However, he did not act responsibly under the circumstances. The debt to his father for the purchase of the used-car dealership has been outstanding since 2010, and the $61,144 judgment has been outstanding since 2014. Although Applicant states that he has discussed settlement with his father, he has not initiated and adhered to a good-faith effort to repay the judgment. To the contrary, Applicant has stated that he does not intend to pay the debt, and has indicated that he is waiting for the statute of limitations to run and for the debt to become uncollectible. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an applicant's favor. *See, e.g,* ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

Applicant's financial issues are recent, ongoing, and unresolved. Applicant is legally obligated to pay the judgment, yet has chosen not to do so. This conduct raises concerns about Applicant's willingness to abide by rules and regulations, and raises questions about his reliability, trustworthiness, and good judgment. Applicant contacted the IRS and the major credit reporting agencies in an attempt to have the derogatory entry of the IRS lien removed from his credit reports. Although Applicant states that he disputes the judgment, he did not provide any evidence supporting this contention, nor did he provide any evidence of any actions he has taken to dispute the legitimacy of the debt. None of the mitigating conditions apply to this allegation.

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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

> (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant has worked for his current employer for more than seven years. He resolved his 2012 tax lien in 2017. However, Applicant does not intend to pay the $61,144 judgment owed to his father, but instead is awaiting 2021 when the judgment becomes unenforceable. While Applicant remains unwilling to resolve the judgment, he borrowed over $34,000 in April 2017 to purchase a vehicle, and has over $16,000 in consumer credit-card debt. Although he is current on his monthly financial obligations, his prioritization of maintaining his personal debts over resolving the $61,144 judgment indicates an unwillingness to satisfy his legal obligations and raises concerns about Applicant's security trustworthiness.

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 delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge