



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 17-02161
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

02/09/2018

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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.

**History of the Case**

Applicant submitted a security clearance application on March 11, 2015. On July 1, 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 July 21, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 18, 2017, and the case was assigned to me on October 23, 2017. On November 9, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 5, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through K, which were admitted without objection. I kept the record open until December 20, 2017, to enable him to submit additional documentary evidence. He timely submitted AX L, M, and N, which were admitted without objection. DOHA received the transcript (Tr.) on December 12, 2017.

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

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f. He denied SOR ¶¶ 1.c and 1.d. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old logistics analyst employed by a defense contractor since December 2012. He has been employed by defense contractors since November 2002. He has held a security clearance since November 2004.

Applicant earned a bachelor's degree in industrial technology in May 2000 and a master's degree in engineering management in May 2010. He has never married. He has a 14-year-old daughter, who lives with him.

Due to federal budget cuts, Applicant's salary was reduced by 18.25% on October 1, 2014, reducing his take-home pay per two-week pay period from \$1,568 to \$1,308. In June 2016, his part-time job was eliminated when his employer went out of business, reducing his income by about \$100 per week. (Tr. 27.) His gross income was \$56,046 for tax year 2014; \$46,797 for tax year 2015; and \$47,617 for tax year 2016. As a result of his reduced income, he fell behind in his payments on a credit-card account and his home-mortgage loan. (Attachments to SOR Answer; Tr. 27.) He incurred federal tax debts for \$3,981 for tax year 2013 and \$2,973 for tax year 2014, because he had insufficient tax withholding from his pay. (Tr. 28.)

The SOR alleges a delinquent credit-card account charged off for \$3,570 (SOR ¶ 1.a); home-mortgage loan payments past due for \$2,465 (SOR ¶ 1.b); failure to timely file federal income tax returns for tax years 2012 through 2016 (SOR ¶ 1.c); and failure to timely file state income tax returns for tax years 2012, 2013, 2015, and 2016 (SOR ¶ 1.d). It also alleges a federal tax debt of \$3,981 for tax year 2013 (SOR ¶ 1.e) and a federal tax debt of \$2,973 for tax year 2014 (SOR ¶ 1.f).

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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.

Applicant negotiated a payment plan for the credit-card debt in SOR ¶ 1.a, providing for monthly payments of \$37.50. He has reduced the amount of the debt from \$3,570 to \$3,195. (Tr. 29-30; AX A.)

In July 2017, Applicant applied for borrower's assistance from a state agency, and his application was approved in November 2017. His monthly payments have been reduced from \$1,053 to \$740, and he made the December 2017 payment. After three months, his payments will be adjusted to reflect any change in his income. If he misses any payments, his participation in the assistance program will be terminated. (Tr. 30-31; AX B.)

Applicant filed his federal income tax return for 2012 in August 2015 and owed \$701 for that year. He established an installment agreement in November 2015 and made a \$25 payment in September 2016. The installment agreement was terminated in December 2016. (Attachment to SOR Answer.)

Applicant filed his federal income tax return for 2013 in June 2014 and owed \$2,932. He made a \$284 payment in August 2015 and entered into an installment agreement in November 2015. The installment agreement was terminated in December 2016. (GX 2 at 5-6.)

Applicant filed his federal income tax return for 2014 in September 2015 and owed \$2,416. He entered into an installment agreement in November 2015, which was terminated in December 2016. (GX 2 at 7-8.)

In November 2017, Applicant applied for an installment agreement for an estimated \$7,000 federal income tax debt, offering to pay \$50 per month. (AX H.) As of the date of the hearing, he had not received a response to his request. (Tr. 41.) The instructions on the request for an installment agreement required that he submit an IRS Form 433-F, Collection Information Statement, because the amount of his tax debt divided by 72 was greater than \$97 per month. He admitted that he did not submit the IRS Form 433-F with his request. (Tr. 42.)

Applicant filed his federal income tax return for 2015 in December 2017. The return reflects that he was entitled to a refund of \$477. (AX L, N, and M.) He testified that he did not file this return on time because he could not afford to pay a tax preparer. (Tr. 39.)

Applicant's federal income tax return for 2016 reflects that he is entitled to a refund of \$66. (AX D.) He testified that he filed it shortly before the hearing, but he submitted no documentation showing that the return was filed.

Applicant filed his state income tax returns for 2012, 2013, and 2014 in November 2017. (AX J and K.) He submitted the TurboTax cover sheets for the 2015 and 2016 state returns, but he provided no evidence that the returns were submitted to the state tax authority. (AX E at 2, F, and G.) As of July 2017, all state income taxes that

were due had been collected by a tax levy on his wages. (AX E at 1; Attachments to SOR Answer.) Although the collection is listed as a tax levy on his pay statements, he testified that he started the payments voluntarily. (Tr. 44.)

Applicant testified that he failed to timely file his federal and state income tax returns for 2012 because he “just got sidetracked.” (Tr. 37.) He did not file his 2013 returns because he could not afford to pay the taxes due and “was just trying to buy [himself] time.” (Tr. 38, 41.) He admitted that he gave paying taxes a lower priority than other household expenses. (Tr. 38.)

Applicant estimated that his net monthly remainder after paying all his expenses is about \$200. (Tr. 46.) Shortly before the hearing, Applicant paid off his car loan, and he now has an additional \$500 per month available. (Tr. 33.) At the time of the hearing, he had only about \$200 in his checking account, nothing in his savings account, and about \$9,000 in his 401(k) account. He has never sought or received financial counseling. (Tr. 47.)

### **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. . . . 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).

Applicant's answer to the SOR, his testimony at the hearing, and the documentary evidence submitted by both parties establish the following 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 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): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur. His repeated failures to timely file his federal and state income tax returns cast doubt on his current reliability, trustworthiness, or good judgment.

AG ¶¶ 20(b) and 20(d) are established for the credit-card debt alleged in SOR ¶ 1.a and the delinquent mortgage-loan payments alleged in SOR ¶ 1.b. They are not established for Applicant's failure to timely file his federal and state income tax returns, alleged in SOR ¶¶ 1.c and 1.d, and his federal tax debt for 2013 and 2014, alleged in SOR ¶¶ 1.e and 1.f.

Applicant's pay reduction and the loss of his part-time job were circumstances beyond his control. He acted responsibly by making payment agreements for his credit-card account and his home-mortgage loan and complying with his payment agreements. He has not acted responsibly regarding his federal and state income tax debts. He took no significant action to resolve his federal tax debt until he made a \$284 payment in August 2015 and made an installment agreement in November 2015. The record is unclear about the starting date for the state tax levy. He requested an installment agreement for his federal tax debts in November 2017, but he admitted that he did not submit the required financial documentation.

Applicant did not file his past-due federal and state income tax returns until 2015. He has offered no valid excuse for not filing his federal and state income tax returns on time. His inability to pay the taxes due does not excuse his failure to file the federal and state returns as required. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961)

AG ¶ 20(g) is not fully established. Applicant has filed his federal and state income tax returns for 2012-2014. He filed his federal income tax return for 2015. He claimed that he filed his federal return for 2016 and the state returns for 2015 and 2016, but he failed to produce documentary evidence to support his claim. The fact that Applicant has filed some of his past-due returns "does not preclude careful consideration of his security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). Furthermore, the establishment of some mitigating evidence does not compel a favorable security-clearance decision. ISCR Case No. 11-14784 (App. Bd. Jan. 17, 2014).

## **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>

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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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied 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 Applicant has not mitigated the security concerns raised by his multiple failures to timely file his federal and state income tax returns and failure to take meaningful steps to resolve his 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 and 1.b: For Applicant

Subparagraphs 1.c-1.f: Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge