



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 17-03049
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

02/26/2018

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**Decision**

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HEINTZELMAN, Caroline E., 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 October 13, 2016. On September 13, 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 October 4, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on October 23, 2017. On October 24, 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 23, 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.

The FORM included Item 4, a summary of an enhanced subject interview (ESI) conducted on April 27, 2017. The ESI 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 ESI summary; make any corrections, additions, deletions or updates; or object to consideration of the ESI on the ground that it was not authenticated. Applicant submitted a response to the FORM but did not comment on the accuracy or completeness of the ESI summary, nor did he object to it. I conclude that he waived any objections to the ESI 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.<sup>1</sup>

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

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a. through 1.e. His admissions are incorporated into my findings of fact.

Applicant is a 41-year-old systems administrator employed by a defense contractor since September 2016, and he requires a security clearance for this employment.<sup>3</sup> He was previously granted a DoD clearance in June 2002. Since July 2014, Applicant has been self-employed as a computer technician for approximately ten hours a week (Item 4 at 1). He was unemployed from a primary employer between June 2014 and September 2014.<sup>4</sup> Applicant and his ex-wife were married between 2000 and 2007, and he has two sons. Applicant earned a bachelor's degree in 1999 and a Microsoft Certified Systems Administrator Certification.

SOR ¶¶ 1.a. and 1.b., allege failure to file state and federal tax returns for tax years 2007, 2012, 2013, and 2014. SOR ¶¶ 1.c., 1.d., and 1.e. are delinquent medical bills.

In his October 2016, security clearance application, Applicant disclosed he failed to file his 2007 returns due to his divorce; he failed to file his 2012 returns due to incomplete paperwork, including his W-2; and he failed to file his 2013 and 2014 returns

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<sup>1</sup> ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

<sup>2</sup> Applicant's personal information is extracted from his security application (Item 3) unless otherwise indicated by a parenthetical citation to the record.

<sup>3</sup> Applicant was also employed as a defense contractor by other employers in May 2000 to March 2007 and September 2014 to September 2016.

<sup>4</sup> During his unemployment, Applicant was support by his self-employment income, his parents, and state unemployment compensation (Item 4 at 2).

due to a lack of income and time. Applicant indicated that he was preparing to file all prior and current taxes before the end of 2016 (Item 3 at 31-33).

In April 2017, Applicant told the Government investigator he received notifications from the IRS for tax years 2012 through 2014, but had taken no action to file or pay his returns due to a lack of sufficient funds. He also disclosed that he had not filed state or federal returns for tax year 2007, and he owed approximately \$800 (Item 4 at 2-3). Finally, he told the investigator that he intends to file and pay his back taxes by December 2017.

In his response to the Government's FORM, Applicant provided documentation that he filed his 2007 tax returns in October 2008, and he filed his 2012, 2013, and 2014 state and federal tax returns on November 25, 2017 (AX A). His documentation indicates he is due a \$4 refund from the IRS for 2012, and he owes state taxes for 2012 in the amount of \$161. Applicant owes the IRS \$203 and his state \$223 for tax year 2013. He is due a refund of \$454 from the IRS and he owes his state \$217 for tax year 2014. Applicant claims that his credit reports no longer demonstrate an outstanding balance for SOR ¶¶ 1.c. and 1.d. He provided documentation that he resolved SOR ¶ 1.e. on November 24, 2017.

### **Policies**

"[N]o one has a 'right' to a security clearance."<sup>5</sup> 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."<sup>6</sup> 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."<sup>7</sup>

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

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<sup>5</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>6</sup> *Egan* at 527.S

<sup>7</sup> EO 10865 § 2.

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.”<sup>8</sup> 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.<sup>9</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>10</sup> The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.<sup>11</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.<sup>12</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>13</sup>

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>14</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>15</sup>

## 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

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<sup>8</sup> EO 10865 § 7.

<sup>9</sup> See *Egan*, 484 U.S. at 531.

<sup>10</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>11</sup> ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

<sup>12</sup> Directive ¶ E3.1.15.

<sup>13</sup> ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>14</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>15</sup> *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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.<sup>16</sup>

Applicant's admissions and his credit reports 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 security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

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.

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<sup>16</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 20(a) is not fully established. The debts alleged in SOR ¶¶ 1.c. through 1.e. were assigned for collection in 2016 and 2017. Thus, his financial problems are recent and recurrent. Additionally, Applicant still has outstanding balances for his 2013 federal taxes, and for his 2012, 2013, and 2014 state taxes.

AG ¶ 20(b) is not fully established. Despite the lack of details in the record, I find that Applicant's period of unemployment in 2014 and his 2007 divorce were circumstances beyond his control. However, Applicant did not meet his burden to establish that he acted responsibly to address his unfiled state and federal tax returns and unpaid debts in a timely manner.

AG ¶ 20(d) is not fully established. Applicant failed to provide documentation showing that he has paid his outstanding tax debts or the debts alleged in SOR ¶¶ 1.c. and 1.d.

AG ¶ 20(e) is not established. While Applicant articulated a basis to dispute SOR ¶¶ 1.c. and 1.d, he did not provide any documentary proof to substantiate his dispute or sufficient evidence of actions taken to resolve the issue.

AG ¶ 20(g) is not fully established. I credit Applicant with filing his 2007, 2012, 2013, and 2014 state and federal tax returns. However, he did not provide any corroborating documentation to show that he established a payment plan or made any payments to the IRS and his state. Additionally, he failed to file his 2012, 2013, and 2014 returns for several years and filed only after the Government sent him the FORM, despite previous claims that he would file in 2016.

I considered that Applicant has experienced financial setbacks, and the fact that he is not required to be debt-free in order to qualify for a security clearance.<sup>17</sup> However, Applicant failed to file his state and federal tax returns for tax years 2012, 2013, and 2014 until November 2017, years after he was legally required to file. Additionally, he has not paid the outstanding balances for his state taxes or his 2013 federal tax bill. Nor has he submitted proof of payment or resolution for his two remaining delinquent debts. Moreover, he failed to provide sufficient evidence to establish that he acted responsibly to address his debt, especially during the periods when he was gainfully employed. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

### **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.

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<sup>17</sup> ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

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 not mitigated the security concerns raised by his failure to pay his delinquent debts. Accordingly, Applicant has not 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): AGAINST APPLICANT

Subparagraphs 1.a. – 1.d.: Against Applicant

Subparagraph 1.e.: For 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.

Caroline E. Heintzelman  
Administrative Judge