



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 17-03054  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

10/24/2018

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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.

**Statement of the Case**

Applicant submitted a security clearance application on March 8, 2016. On February 28, 2018, 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on March 28, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 16, 2018. On May 22, 2018, 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 July 11, 2018, and did not respond. The case was assigned to me on October 11, 2018.

### **Findings of Fact<sup>1</sup>**

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 59-year-old assembly mechanic employed by a defense contractor since November 2014. He has never held a security clearance.

Applicant married in March 1992 and divorced in April 2003. He remarried in May 2013. He and his current wife have a nine-year-old daughter. He has four stepchildren, ages 32, 21, 18, and 16.

Applicant worked in the private sector from December 1977 to April 2008, when he retired. He took a lump-sum payment of his pension and withdrew all the funds in his 401(k) retirement account. He did not have any federal or state taxes withheld from the two payouts. When he filed his federal and state tax returns for 2008, he owed \$87,407 in federal taxes and \$12,515 in state taxes, which he could not afford to pay.

Applicant failed to timely file his federal and state returns for tax years 2009 through 2013. He filed his returns for 2009 in April 2014; for 2010, 2011, and 2012 in June 2014; and for 2013 in July 2014. His federal and state returns for tax years 2014 to the present have been filed on time.

For 2009, Applicant owed about \$32,751 in federal taxes and \$5,792 in state taxes. For 2010, he did not owe any federal or state taxes. For 2011, he owed \$621 in federal taxes and no state taxes. For 2012, he owed \$1,832 in federal taxes and \$33 in state taxes. For 2013, he owed \$4,020 in federal taxes and \$954 in state taxes. For 2014, he owed \$1,594 in federal taxes and \$214 in state taxes. Starting in 2014, he has intentionally overwithheld federal and state taxes so that the overpayments can be applied to his tax debts.

In November 2013, the IRS filed a tax lien against Applicant for \$138,000. In October 2014, the IRS filed another tax lien against him for \$101,000. (Item 7 at 3.) The IRS applied Applicant's overpayment of \$888 in 2015 to his tax debt for 2008, leaving a balance due of \$105,816. (Item 5 at 1.) It applied Applicant's overpayment of \$1,222 for 2016 to his tax debt for 2008, leaving a balance of \$108,797. (Item 5 at 2.)

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

The state tax authority garnished Applicant's pay in March 2015 and again in May 2016. (Item 6 at 1-2.) A consolidated billing notice from the state reflects that, as of January 5, 2018, Applicant owed \$26,005 in state taxes. (Item 4 at 13.)

After about two years in retirement, Applicant realized that he could not afford to remain retired, and in April 2010, he began working as a store manager and repairman. He also began working part time as a janitor. (Item 4 at 19.) In November 2014, he was hired by his current employer, a defense contractor.

While unemployed and underemployed, Applicant used credit cards for living expenses, and a judgment was entered against him for about \$15,000 in credit-card debt. He filed a Chapter 7 bankruptcy petition in April 2015 and received a discharge in July 2015. Debts totaling about \$70,971 were discharged, but the delinquent federal and state taxes were not discharged.

Applicant has contacted the IRS and the state tax authority but has not yet made any payment agreements. Notwithstanding his substantial tax debt, he traveled outside the United States on a family vacation in September 2015, and he went on a seven-day Caribbean cruise in December 2017. (Item 3 at 31; Item 4 at 2.)

### **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 SOR alleges that a federal tax lien was filed against Applicant in 2013 for about \$138,000, another federal tax lien was filed against him in 2014 for about \$101,000, and a state tax lien was filed against him in 2015 for about \$24,624 (SOR ¶¶ 1.a, 1.b, and 1.e). It also alleges that he failed to file his federal and state income tax returns for 2008 through 2013, that he failed to pay the federal taxes due for 2008, 2009, and 2011 through 2014, and that he failed to pay the state taxes due for 2007 through 2009 and 2013 (SOR ¶¶ 1.c and 1.d). It alleges that his wages were garnished in May 2015 for \$3,302, but it does not allege who filed the writ of garnishment (SOR ¶ 1.f). Finally, it alleges that Applicant filed a Chapter 7 bankruptcy petition in April 2015 and received a discharge (SOR ¶ 1.g).

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 admissions and the documentary evidence in the FORM establish the following potentially 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 pay annual Federal, state, or local income tax as required.

The following mitigating conditions are relevant:

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), 20(b), and 20(d) are not established. Applicant's failures to timely file his federal and state tax income returns and the resulting tax debts are recent, numerous, and did not occur under circumstances making them unlikely to recur. His tax debts are not the result of conditions largely beyond his control, but rather were the result of his ignorance of the tax consequences of taking a lump-sum pension and withdrawing all of his 401(k) retirement account. His Chapter 7 bankruptcy was the result of excessive reliance on credit cards for living expenses. His two vacations in 2014 and 2015, notwithstanding his overwhelming tax debts, indicate lack of concern about his tax debts. 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(f) is not fully established. Applicant receives some credit for filing his overdue federal and state income tax returns. However, a security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that Applicant has filed his past-due returns "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 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>2</sup>

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to 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 not mitigated the security concerns raised by his failures to timely file and pay federal and state income taxes, his federal and state tax debts, and his Chapter 7 bankruptcy.

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<sup>2</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.

### **Formal Findings**

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

Guideline F (Financial Considerations):                      AGAINST APPLICANT

Subparagraphs 1.a-1.g:    Against Applicant

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge