



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-03190
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/13/2018

Decision

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 (SCA) on June 12, 2015. On October 30, 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), 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 January 13, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 8, 2018, and the case was assigned to me on April 12, 2018. On April 23, 2018, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 24, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or any documentary evidence. I kept the record open until June 15, 2018, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A through I, which were admitted without objection. DOHA received the transcript (Tr.) on June 7, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, he admitted all the allegations except SOR ¶¶ 1.m and 1.o, which he denied. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old program analyst employed by a defense contractor since May 2015. He served on active duty in the U.S. Navy from February 2005 to May 2013. He was unemployed from May 2013 until he began his current job. He has held a security clearance since October 2005. (GX 2, summary of PSI at 17.))

Applicant married in February 2006. His financial problems began in March 2006, when he bought a new car that he could not afford. Their first child was born in May 2006. He is severely autistic and requires specialized therapy and medications. (Tr. 25.) In late 2006, Applicant surrendered the new car, and he incurred a deficiency of about \$1,000 after the repossession and sale. He paid off the deficiency but purchased another car in 2008 so that his wife could maintain a part-time job. Their second child was born in January 2009. They had marital problems and separated in 2011. The marital breakup was due to several factors, including financial disagreements and his wife's extramarital affair with a registered sex offender. After they separated, Applicant's wife kept the second car, which was titled in Applicant's name, but she failed to make the payments, resulting in another repossession. He paid off the deficiency for this repossession in 2013. (GX 2, summary of PSI at 6-18.)

In May 2012, Applicant received nonjudicial punishment under Article 15, Uniform Code of Military Justice, 10 U.S.C. § 815, for disobedience of a military restraining order, imposed after his wife's accusations of assault and attempted kidnapping. He was reduced from yeoman second class (pay grade E-5) to yeoman third class (pay grade E-4). (GX 2, summary of PSI at 10; Tr. 21.) In May 2013, he was discharged with an honorable discharge for failure to meet the Navy's weight standards. He received severance pay of about \$14,000. (Tr. 45.) He has an 80% service-connected disability for sleep apnea and respiratory problems. (Tr. 21.)

The SOR alleges that Applicant failed to timely file his federal and state income tax returns for tax years 2012 through 2015 (SOR ¶¶ 1.a and 1.b), and that he owes

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

delinquent federal taxes of about \$8,000 for tax year 2011 (SOR ¶ 1.c). It also alleges two debts to another government agency (AGA) for \$770 and \$506 (SOR ¶¶ 1.g and 1.h); two medical debts for \$191 and \$167 (SOR ¶¶ 1.i and 1.m); a medical debt that was reduced to a judgment for \$481 (SOR ¶ 1.o); and seven consumer debts totaling about \$20,204 (SOR ¶¶ 1.d-1.f, 1.i-1.k, and 1.n). Applicant disclosed the tax delinquencies during a personal subject interview (PSI) in September 2015 and in response to financial interrogatories in October 2017. (GX 2). The other debts alleged are reflected in credit reports from July 2017 (GX 3), December 2015 (GX 4), and May 2018 (GX 5). The evidence concerning these debts is summarized below.

SOR ¶¶ 1.a and 1.b: failure to file federal and state income tax returns as required for tax years 2012 through 2015. Applicant attributed his failure to timely file his tax returns to the amount of his tax debt and “absolute negligence.” (Tr. 30.) He testified that he had filed his federal and state returns for 2016 and 2017, but he had not yet filed the returns for 2012 through 2015. He submitted documentation (AX A) that his refund for tax year 2017 was applied to federal taxes owed for 2010, indicating that his federal return for 2017 was filed. He submitted a certified mail receipt reflecting a document was mailed to the state tax authority in June 2018 (AX E), but he did not submit any evidence showing what was mailed.

SOR ¶ 1.c: federal income tax debt of about \$8,000 for tax year 2011. Applicant testified that this debt was incurred after he and his wife were legally separated in 2011, and he had custody of the two children. He filed his federal income tax return for 2011, claiming the children as dependents, and received a refund of \$8,000. His wife also claimed the children as dependents, and the IRS required that he return the refund. He testified that he had a payment plan with the IRS and had reduced the indebtedness to \$1,223, but he submitted no documentation of a plan or any payments. (Tr. 31-32.)

SOR ¶ 1.d: automobile loan charged off for \$15,905. This account was opened in May 2011 and charged off in February 2013. (GX 3 at 5.) In May 2018, Applicant received an offer from the creditor to settle this debt for \$5,566 by making monthly payments of \$154. (AX C; Tr. 33-34.) As of the date the record closed, he had not accepted the offer or made any payments.

SOR ¶ 1.e: credit-card account referred for collection of \$1,066. Applicant testified that he had a payment plan for this debt, providing for monthly \$41 payments beginning in October 2017. (Tr. 36.) Although he provided documentary evidence of the plan in his answer to the SOR, he provided no evidence of payments.

SOR ¶ 1.f: credit-card account referred for collection of \$835. Applicant has been making bi-weekly \$25 payments on this debt since December 2017, and the balance has been reduced to about \$587. (Attachment to SOR Answer; AX I.)

SOR ¶¶ 1.g and 1.h: debts for overpayment by AGA referred for collection of \$770 and \$506. These debts have been paid by involuntary offsets against his disability pay. (Attachment to SOR Answer; Tr. 18.)

SOR ¶ 1.i: credit-card account referred for collection of \$250. Applicant made a \$40 payment on this debt in May 2018. His balance as of that date was \$170, indicating that some payments have been made on this debt. (AX B.)

SOR ¶¶ 1.j-1.o. Applicant testified that he has contacted these creditors and verified the validity of the debts, but he has not negotiated payment plans or made any payments on the debts. These debts are a cellphone bill for \$1,248 (SOR ¶ 1.j); a credit-card bill for \$748 (SOR ¶ 1.k); a medical bill for \$191 (SOR ¶ 1.l); a medical bill for \$167 (SOR ¶ 1.m); a public storage bill for \$152 (SOR ¶ 1.n); and a medical bill reduced to judgment for \$481 (SOR ¶ 1.o).

Applicant maintains detailed Excel spreadsheets, listing all his debts. His spreadsheets reflect that he has contacted his creditors and prioritized the order of payment. (AX F; AX H.) He testified that his plan is to pay off the smallest debts first and then address the larger debts. (Tr. 39-40.) However, as of the date the record closed, he presented no evidence reflecting that he had resolved any of the small debts alleged in SOR ¶¶ 1.l (\$191), 1.m (\$167), or 1.n (\$152).

Applicant currently earns about \$42,000 per year. His net monthly remainder is only about \$100. (Tr. 28-29.) He is seeking a second part-time job to supplement his income. (AX G.) He has out-of-pocket expenses of about \$300 per month for his autistic son, and he is trying to obtain Medicaid coverage for his son in order to generate more funds for debt payments. (Tr. 42-43.)

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 admissions and the documentary evidence in the record establish the following potentially 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 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) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's marital breakup and his son's autism were conditions largely beyond his control. His premature discharge from the

Navy and subsequent employment were not due to a condition beyond his control, because they were the result of his failure to maintain Navy fitness standards. He has not acted responsibly. Although his ability to repay his delinquent debts is limited by his income, he has offered no reasonable excuse for his failure to timely file his federal and state income tax returns for 2012 through 2015, which remain unfiled. He has contacted his creditors, and he claimed that he has a payment plan for the debt alleged in SOR ¶ 1.e, but he submitted no documentary evidence of payments or a plan. He claimed that he has negotiated payment plans for his delinquent taxes, but he presented no documentary evidence of payments or payment plans. The debts to the AGA were collected by involuntary offsets against his disability benefits and not due to any affirmative action on his part.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.f and 1.i. It is not established for the debts alleged in SOR ¶¶ 1.g and 1.h, which were collected by an involuntary offset against his disability payments. An involuntary offset does not amount to good faith within the meaning of this mitigating condition. See ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011). However, the resolution of the debts alleged in SOR ¶¶ 1.g and 1.h somewhat mitigates the security concern about them. This mitigating condition is not established for the debts alleged in SOR ¶¶ 1.j through 1.o, on which no payments have been made.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's financial spreadsheets reflect a plan to resolve the debts alleged in SOR ¶¶ 1.c-1.o, but he has taken minimal steps to implement it.

AG ¶ 20(g) is not established. As of the date the record closed, Applicant had not filed his past-due federal and state tax returns. He claimed that he had a payment plan for his federal tax debt, but he submitted no documentation to support his claim. An applicant who claims that a debt is being resolved is expected to present documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). Applicant's repeated failures to fulfill his legal obligation to timely file tax returns demonstrates a lack of the good judgment and reliability required of those granted access to classified information. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016).

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).²

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative 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 delinquent debts and repeated failure to timely file his federal and state income tax returns.

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.e:	Against Applicant
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Subparagraphs 1.f-1.i:	For Applicant
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Subparagraphs 1.1.j-1.o:	Against Applicant
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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

² 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.