



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 17-03282
	)	
Applicant for Security Clearance	)	

**Appearances**

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

03/29/2018

**Decision**

MARINE, Gina L., 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 December 14, 2016. On October 20, 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 (EO) 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 June 8, 2017.

Applicant answered the SOR on December 13, 2017, and requested a decision on the record without a hearing. On February 5, 2018, the Government sent a complete copy of its written case, a file of relevant material (FORM) including documents identified as Items 1 through 5, to Applicant. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on February 8,

2018, and did not respond. Items 1 and 2 are the pleadings in the case. Items 3 through 5 are admitted into evidence. The case was assigned to me on March 27, 2018.

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

Applicant, age 61, has three adult children. He was divorced from his wife of 16 years in 1996. He has cohabited with his fiancé since 2015. He honorably served in the U.S. Army from 1976 until 1992. He has been employed full time by a defense contractor since 1984. He earned an associate's degree in 1990, and a bachelor's degree in 1993. He has maintained a security clearance since at least 2006.

Applicant failed to timely file, as required, his state income tax returns for tax years 2011 through 2016 (SOR ¶ 1.a). He had the financial ability to pay, but failed to do so because of laziness and procrastination. Although it was not alleged in the SOR,<sup>2</sup> Applicant accrued state income tax debts totaling approximately \$6,590 for tax years 2012 through 2016. He planned to file all of his delinquent returns by mid-January 2018, and to pay his delinquent taxes by September 2018. He also planned to adjust his state tax exemption to withhold additional income.

Applicant agreed to reimburse his ex-wife for attorney's fees totaling \$7,500 that she incurred to finalize a consent order concerning the division of his retirement benefits. After Applicant failed to timely reimburse her, his ex-wife obtained a court judgment and placed a lien on Applicant's home for the amount owed. In June 2017, Applicant reached an agreement with his ex-wife to resolve the debt. In November 2017, the judgment was satisfied and the lien was released. Applicant did not explain why he failed to timely pay this debt.

Applicant averred that he lives within his means, and timely pays his household expenses. His 2017 credit report revealed no delinquent debts.

### **Policies**

"[N]o one has a 'right' to a security clearance."<sup>3</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

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<sup>1</sup> Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 2), his SCA (Item 3), and the summary of his 2017 security clearance interview (Item 5). Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that he was entitled to make corrections, additions, deletions, and updates to Item 5. Applicant was also informed that he was entitled to object to consideration of Item 5 on the ground that it was not authenticated. Because Applicant did not respond to the FORM, I conclude that he has waived any objection to Item 5. ISCR Case No. 14-06781 (App. Bd. Dec. 16, 2016).

<sup>2</sup> Because his tax debt was not alleged in the SOR, I will consider it only to evaluate mitigation and whole person.

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

information.”<sup>4</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>5</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 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>6</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>7</sup> “Substantial evidence” is “more than a scintilla but less than a preponderance.”<sup>8</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>9</sup> Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain,

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<sup>4</sup> *Egan* at 527.

<sup>5</sup> EO 10865 § 2.

<sup>6</sup> EO 10865 § 7.

<sup>7</sup> See *Egan*, 484 U.S. at 531.

<sup>8</sup> See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

<sup>9</sup> See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

extenuate, or mitigate the facts.<sup>10</sup> An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.<sup>11</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>12</sup> “[S]ecurity clearance determinations should err, if they must, on the side of denials.”<sup>13</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

The 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. 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>14</sup>

Applicant's admissions and his credit reports establish 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 fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

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<sup>10</sup> Directive ¶ E3.1.15.

<sup>11</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>12</sup> ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>13</sup> Egan, 484 U.S. at 531; See also AG ¶ 2(b).

<sup>14</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

These security concerns have not been 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(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.

Applicant's failure to timely file his tax returns and pay his delinquent taxes over an extended period, and to timely pay his wife's attorney's fees are recent events. The fact that Applicant waited until after a judgment and lien were entered against him undermines the positive value attributed to him finally paying the fees, especially because he did not provide a good reason for the delay. Applicant had not yet filed his delinquent tax returns or paid his delinquent taxes as of December 2017, when he completed his SOR answer. He failed to respond to the FORM or otherwise provide updates on any efforts made since then. The irresponsible manner with which Applicant handles his financial obligations casts doubt on his current reliability, trustworthiness, and good judgment. Accordingly, 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. 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 financial irresponsibility. Accordingly, Applicant 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**

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

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.b: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine  
Administrative Judge