



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



In the matter of: )  
)  
) ISCR Case No. 17-03847  
)  
Applicant for Security Clearance )

**Appearances**

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

08/01/2018

**Decision**

GLENDON, John Bayard, 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**

On January 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD 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 February 15, 2018, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 19, 2018. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 27, 2018, and he did not object to the Government's evidence, including Item 4,<sup>1</sup> submit any additional evidence, or otherwise respond. The case was assigned to me on June 27, 2018.

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

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

Applicant is a 43-year-old employee of a defense contractor. He has been employed by this company since at least 2006. He has worked and lived in a foreign country during this period. Prior to 2006, he served in the U.S. Army as an enlistee for nine years. He has held a secret clearance since about 2006. (FORM Item 4 at 3.) He has been married for the last 20 years. He and his wife have one child, who is 15 years old. Applicant also has a 28-year-old stepchild.

The SOR alleges three delinquent debts totaling about \$16,700. Two of these debts, representing about \$2,300, are owed to two U.S. Government agencies, specifically, the Department of Veterans Affairs (VA) and the Internal Revenue Service (IRS). The third debt is owed to a collection agent seeking repayment of a student loan from an educational institution. The evidence concerning the three SOR debts is summarized below.

**SOR ¶ 1.a: VA debt in collection for \$1,123.** This debt arose in approximately 2012 when Applicant ceased taking online classes at an educational institution (the Institute). The debt was for "online school fees" that were owed to the VA for "failing to complete school requirements." (FORM Item 3 at 36.) In his August 24, 2016 security clearance application (SCA), Applicant stated that he intended to repay this Federal debt from future savings. He attached to his response to the SOR, dated February 15, 2018, a letter from the VA, dated February 2, 2018, confirming that he had proposed to pay this debt with monthly installment payments of \$200. The first payment was due on March 1, 2018. (FORM Item 2 at 3.) The record does not reflect when Applicant received the January 3, 2018 SOR. The record also contains no information or documentation evidencing that Applicant made any payments to the VA. The most recent credit report in

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<sup>1</sup> FORM Item 4 was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant in her FORM that in his response to the FORM, Applicant could comment upon, make corrections, additions, deletions, and updates as necessary, or alternatively that he could object to Item 4 on the ground that it was unauthenticated by a Government witness. Applicant did not respond to the FORM. I conclude that he waived any objections to Item 4. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

<sup>2</sup> Applicant's personal information is extracted from his security clearance application, dated August 24, 2016 (FORM Item 3), unless otherwise indicated by a parenthetical citation to the record.

the record is dated March 19, 2018, and contains no updated information regarding any payments on this six-year-old delinquent debt. (FORM Item 5 at 1.)

**SOR ¶ 1.b: Education debt in collection for \$14,399.** This debt is owed to the collection agency for the Institute for courses he took sometime during the period June 2009 to January 2012. Applicant failed to disclose this debt in his SCA. The debt appears in the Government's November 2016 credit report as a collection matter that was assigned to a collection agency in January 2012. (FORM Item 6 at 3.) Applicant has provided no information or documentation regarding his payment efforts or plans to repay this debt, which has been outstanding for more than six years.

**SOR ¶ 1.c Federal tax debt for \$1,200.** In his SCA, Applicant disclosed that he did not file a Federal tax return in 2013 or pay any taxes owed. He wrote in his clearance application that he was confused whether he had to pay U.S. taxes because his employer characterized its employees, presumably those, like Applicant, who lived and worked in the same foreign country, as "Tax Exempt." (FORM Item 3 at 35.) In his SCA, he wrote that he planned to pay this debt from future savings. He admitted the debt was still outstanding in his response to the SOR, but provided no information regarding his plans to repay the debt. (FORM Item 2 at 2.) In his July 27, 2017 Enhanced Subject Interview (EHI), he reportedly explained that he was paying income taxes in the foreign country in 2013 and that he learned he was not required to do so, though he was required to pay U.S. taxes. He further stated that he intended to pay his back taxes "as soon as possible." (FORM Item 4 at 4.) Applicant provided no response to the Government's FORM, so there is no record evidence as to whether he paid his 2013 U.S. taxes, which were originally due to be paid in April 2014, more than four years ago.<sup>3</sup>

## 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.

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<sup>3</sup> In his SCA, Applicant disclosed that he had not filed his U.S. tax return for 2013. This fact was not alleged in the Government's SOR.

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 FORM 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 pay annual Federal . . . 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 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 authorities to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Although Applicant's three debts are at least four to six years old, the fact that the record evidence reflects that they remain unpaid makes them current debts. They were not infrequent and the record contains no information that would support a conclusion that additional delinquent debts are unlikely to recur. Moreover, Applicant's ongoing indebtedness to the U.S. Government while he has a

pending security clearance application casts doubt on his current reliability, trustworthiness and good judgment.

AG ¶ 20(b) is not established. The record contains no evidence to show that Applicant's financial problems were caused by conditions beyond his control, with the possible exception of his 2013 tax debt. As to that indebtedness, he may have originally been misinformed by his employer about his U.S. tax obligations in that year, but he has not acted responsibly by failing to resolve this outstanding debt once he learned he was obligated to pay U.S. taxes in 2013.

AG ¶ 20(c) is not established. There is no evidence that Applicant has received any financial counseling from any source, and there is no evidence that Applicant's financial problems are being resolved or are otherwise under control.

AG ¶ 20(d) is partially established with respect to his indebtedness to the VA, which is alleged in SOR ¶ 1.a. Applicant has produced a letter evidencing a payment arrangement he made with the VA, but he produced no evidence to show that he adhered to the arrangement by making the monthly payments since March 1, 2018. The fact that he entered into the arrangement after submitting his SCA and being questioned about it in his EHI, undercuts the good-faith nature of his repayment efforts with respect to this debt.

AG ¶ 20(e) is inapplicable because Applicant has not disputed any of the debts alleged in the SOR.

AG 20 (g) is also inapplicable because Applicant has not produced any evidence to show that he has made payment arrangements with the IRS to pay his delinquent 2013 taxes.

### **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>4</sup>

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<sup>4</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 adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. I have considered Applicant's age at the time the three debts alleged in the SOR became delinquent. Four to six years ago, he was sufficiently old to be expected to honor his financial obligations with more maturity. He had served in the U.S. Army for nine years and was well trained in the importance of duty to his country and of acting responsibly. The fact that he waited until 2018 to contact the VA to propose paying his debt to the Government shows a lack of respect for his obligations as a U.S. citizen and as a veteran. His failure to pay his 2013 taxes once he learned he was obligated to do so similarly undermines his case for extenuating circumstances. Applicant did not respond to Department Counsel's FORM, and his failure to provide updated information and documentation reveals a lack of interest in responsibly handling his affairs with the U.S. Government. Applicant has not carried his burden of persuasion to mitigate the Government's security concerns. See Directive ¶ E3.1.15.

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 past actions.

### **Formal Findings**

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

Paragraph 1. Guideline F:           AGAINST APPLICANT

Subparagraphs 1.a-1.c:   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.

John Bayard Glendon  
Administrative Judge