



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04288

Appearances

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

11/27/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on March 9, 2016. On January 17, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on March 7, 2018, and requested a decision on the record without a hearing. On April 6, 2018, a complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant. He received the FORM on April 17, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM. Items 1 through 7 are admitted into evidence without objection. The case was assigned to me on July 30, 2018.

Findings of Fact

Applicant is 45 years old and works as a master tradesperson for a defense contractor. He has worked for his employer since September 2012. He has been married

since 1996, and he and his wife have four children between the ages of 11 and 24. Applicant enlisted in the U.S. Navy immediately upon graduating from high school in 1992, and honorably served until August 2012, when he retired. He has held a security clearance since approximately 1992.

Applicant attributes his financial issues to the 2012 transition from active duty to civilian life. Additionally, his wife was unable to work for an unspecified period of time due to an injury. As a result, they were unable to pay their mortgage, and their home was foreclosed on in 2014. Prior to the foreclosure, they filed for Chapter 13 bankruptcy protection in May 2014, in an attempt to keep their home. Applicant and his wife paid the filing fee, but the court never received it, and the bankruptcy was subsequently dismissed. (Item 3; Item 4)

In his March 2016 SCA, Applicant disclosed that he had not yet filed his 2014 federal income tax returns. During his March 2017 personal security interview (PSI) he admitted that he had not filed his 2015 federal income tax returns, in addition to the 2014 returns. He failed to file the returns due to confusion regarding tax implications associated with the home foreclosure. Applicant was interviewed again in October 2017, and he admitted that he had not filed his 2014, 2015, and 2016 federal income tax returns. However, he claimed he contacted an accountant in August 2017 to help him file the tax returns, and he intended to resolve the tax issues. (Item 4)

In his March 2018 Answer to the SOR, Applicant admitted to all of the SOR allegations. He claimed he was working to get the various income tax returns filed as soon as possible and pay the outstanding \$2,689 phone bill alleged in SOR ¶ 1.c. (Item 2) He did not respond to the FORM.

Policies

“[N]o one has a ‘right’ to a security clearance.”¹ 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.”² 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.”³

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

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

² *Egan* at 527.

³ Executive Order (EO) 10865 § 2.

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.

Adverse 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.”⁴ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

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.⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁷ Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁸ An applicant has the burden of proving a potential mitigating condition, and the burden of disproving it never shifts to the Government.⁹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹¹

⁴ EO 10865 § 7.

⁵ Directive ¶ E3.1.14.

⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷ See, e.g. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

⁸ Directive ¶ E3.1.15.

⁹ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531; see also AG ¶ 2(b).

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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

The record evidence establishes 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 tax as required).

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable:

- (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;
- (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; and
- (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 did not meet his burden to establish that he acted responsibly to address the alleged unpaid debt and the multiple federal income tax returns. He has known that the government has concerns regarding his finances and taxes for a number of years. He told the government investigator twice in 2017 that he intended to file the tax returns, but failed to do so. In his March 2018 Answer to the SOR, he again claimed he intended to file his tax returns and pay the alleged debt. Finally, Applicant did not respond to the

FORM with proof of any resolution or action. Mitigation under AG ¶ 20(a), 20(b), and 20(g) was not established.

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 the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the financial security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge