



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



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| In the matter of: |) | |
| |) | |
| [REDACTED] |) | ISCR Case No. 17-04376 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2018

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 August 5, 2016. On March 23, 2018, 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 April 10, 2018, and requested a decision on the record without a hearing. On April 24, 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 May 8, 2018, and did not respond.

Item 1 contains the two pleadings in the case. Items 2 through 5 are admitted into evidence. The case was assigned to me on July 26, 2018.

Findings of Fact¹

Applicant, age 55, divorced in March 2011 and has lived in a cohabitant relationship since March 2017. He has two children, ages 18 and 22. He earned his GED in 1981. Since then, he has completed numerous law-enforcement-related courses. In June 2010, Applicant retired after serving as a police officer for the same employer for 20 years. He worked as a police sergeant for another employer from August 2011 through September 2015, when he left to seek employment closer to home. Applicant maintains two part-time jobs: one, as a deputy sheriff since September 2015; and the other, as an armed security officer since June 2016. In June 2016, a defense contractor offered him a part-time position as an investigator contingent upon a favorable determination of his first application for a security clearance.

Because Applicant did not have the money to pay the anticipated taxes, he failed to timely file his federal and state income tax returns for tax years 2012 through 2014. He also failed to timely pay his federal income taxes for tax years 2012 through 2016, which totaled \$33,212 as of March 2018 (SOR ¶¶ 1.a through 1.e), and his state income taxes for tax years 2012 and 2013, which totaled \$4,541 as of December 2017 (SOR ¶ 1.f).² Applicant did not provide any documents to corroborate claims that he has worked with the IRS to resolve his federal tax debts.³

Applicant has four other delinquent debts totaling \$5,446 (SOR ¶¶ 1.g through 1.j). One of those debts, a charged-off \$1,400 revolving line of credit (SOR ¶ 1.h), relates to an investigations business he owned between September 2009 and December 2011. During this period, he worked cases during his off hours until he closed the business because its income was not enough to justify the time and money he invested to keep it running.⁴

Although not alleged in the SOR,⁵ Applicant defaulted on student loans related to college courses for which he was registered in 2005 but never completed. He believed that he owed the college approximately \$300 to \$400. A September 2016 credit report

¹ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 1), his SCA (Item 2), and the summary of his June 2017 security clearance interview (Item 3).

² Item 2 at 38-39; Item 3 at 6-12, 15-16, 20. Because it was not alleged in the SOR, I may only consider his failure to timely file tax returns as a factor in evaluating mitigation and whole person.

³ Item 2 at 38-39; Item 3 at 5 and 16. None of the tax transcripts note any installment agreements (Item 3 at 6-12).

⁴ Item 3 at 14-15, 18.

⁵ Because it was not alleged in the SOR, I may only consider his student loan debt as a factor in evaluating mitigation and whole person.

listed two student loan accounts that were 120 days or more delinquent in the amount of \$379 with an outstanding loan balance of \$3,750.⁶ A January 2018 credit report listed both accounts with \$0 balances, not as paid, but rather as assigned to the government and either transferred or sold.⁷

Applicant's financial problems began in June 2010, when he concurrently separated from his wife and retired. Applicant attributed his tax debts to a mistake that his employer made with respect to changes in the number of deductions that he claimed on his IRS income tax withholding form following his divorce. He did not discover the mistake until he filed his 2015 tax returns because never reviewed his paychecks as he was paid via direct deposit. He then adjusted his deductions to avoid this issue in the future. He filed his 2012 through 2014 tax returns in July 2016 and timely filed his 2015 and 2016 tax returns.⁸

With only one income that had been reduced by half (due to his retirement and subsequent underemployment) and increased divorce-related expenses (child support payments, higher premiums associated with providing health insurance for his two children, and the loss of his entire retirement income to pay monies awarded to his wife), he struggled to pay his \$1,600 monthly mortgage payment and eventually fell behind with other bills. Upon the advice of his divorce attorney, Applicant stopped making his mortgage payments in February 2011. He resumed them in October 2012, after became gainfully employed and worked out a loan modification with his lender to stop foreclosure proceedings. Since then, he was late with his payments once, in December 2016, when his automatic payment did not process for some reason.⁹

In 2012 or 2013, Applicant hired a law firm to help repair his credit and dispute accounts.¹⁰ After paying over \$1,000, he ended his contract with the law firm after none of the disputed items were resolved during the course of a year. Instead, he decided to focus on increasing his income in order to repay his debts. However, he faced a roadblock in 2015 when he was not granted a waiver of the \$30,000 retirement income cap imposed by New York State as his employer had promised, which required him to seek additional income to "make ends meet."¹¹

Despite his income struggles, Applicant claimed that he was never late with his child-support payments or other financial responsibilities regarding his children, both of whom are now in college. However, a September 2016 credit report reflects that at least

⁶ Item 4 at 3.

⁷ Item 3 at 17; Item 5 at 3.

⁸ Item 2 at 38-39; Item 3 at 5-12, 15-16.

⁹ SOR Answer; Item 3 at 17; Item 5 at 1.

¹⁰ Applicant did not dispute any of the debts alleged in the SOR.

¹¹ SOR Answer.

one child-support account had been in collections at some point for reasons not specified in the record.¹²

Applicant acknowledged that, after the divorce, he struggled with managing his finances because his wife handled the finances during their marriage and he was not used to budgeting. He was overwhelmed and too proud to ask for help. He has not sought financial counseling because he does not believe it will help as he does not have the funds to pay his debts. Applicant plans to resolve his debts either from the income he expects to earn if he is granted a security clearance or a refinance of his home once he improves his credit score. In support of mitigation, Applicant stated the following:

I have been in Law Enforcement for over 33 years. I have never allowed my personal life to influence my professional life. I have an outstanding reputation and would never do anything to damage that. I am capable of handling the duties of background investigator with the utmost regard for protection of the safety and security of all information obtained in the course of my duties.¹³

Policies

“[N]o one has a ‘right’ to a security clearance.”¹⁴ 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.”¹⁵ 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.”¹⁶

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

¹² SOR Answer. Item 4 at 6.

¹³ SOR Answer. Item 3 at 15 and 17.

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁵ *Egan* at 527.

¹⁶ EO 10865 § 2.

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.”¹⁷ 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.¹⁸ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁹ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.²⁰ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.²¹ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²²

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²³ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁴

Analysis

The concern under Guideline F (Financial Considerations) 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

¹⁷ EO 10865 § 7.

¹⁸ See *Egan*, 484 U.S. at 531.

¹⁹ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁰ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

²¹ Directive ¶ E3.1.15.

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

²³ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²⁴ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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.²⁵ Furthermore, "[f]ailure to file income tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information."²⁶

Applicant's failure to timely file his tax returns and pay his income taxes and his other unresolved delinquent debts establish 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 income tax as required).

The security concerns raised in the SOR may be 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(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

²⁵ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

²⁶ ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002).

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 filed his delinquent tax returns and resolved his delinquent mortgage account before they became issues with respect to his security clearance. He also established a meaningful track record of remaining current with mortgage payments. However, while he sought the assistance of a law firm to dispute certain accounts and otherwise “repair” his credit, Applicant has not resolved the substantial tax and other debts alleged in the SOR. Although his divorce and retirement-related underemployment were circumstances beyond his control, Applicant has not met his burden to establish that he acted responsibly under those circumstances. In light of the record before me, 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 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 failure to timely pay federal and state income taxes and other delinquent debts. 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.j: Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge