



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



In the matter of:

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2025

Decision

HALE, Charles C., 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 July 19, 2022. On January 16, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD 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), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on January 18, 2024, and requested a hearing before an administrative judge. On May 21, 2024 the Government amended the SOR and Applicant answered the amendment on June 14, 2024. Department Counsel was ready to proceed on May 29, 2024, and the case was assigned to me on November 13, 2024.

On December 4, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 17, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified and did not present witness testimony or offer Applicant Exhibits (AE). DOHA received the transcript (Tr.) on January 10, 2025. The record was held open until January 7, 2025. On January 7, 2025, Applicant's request for the record to remain open until January 28, 2025, was granted. Neither side offered any evidence while the record was open. (Tr. at 59.)

Findings of Fact

In Applicant's answers to the SOR and to the SOR amendment, hereafter referred to as SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 48-year-old employee of a federal contractor. He has worked for his employer for the past four years. He has an associate degree, earned in 2016, and is taking classes to earn his bachelor's degree. He is married and has two children, one of whom, a teenager, lives with him. His other child is an adult. He has never held a security clearance.

The SOR alleges a Chapter 7 Bankruptcy (SOR ¶ 1.x), nine allegations dealing with failure to file and/or pay Federal income taxes (SOR ¶¶ 1.a-1.i), and 14 delinquent debts totaling about \$21,798. His delinquent debts alleged in the SOR are reflected in credit reports from August 2022 through December 2024 and in his Chapter 7 Bankruptcy filings. (GE 4-6, GE 7). Applicant admitted all the debts in his answer to the SOR but provided no information explaining how they were incurred or what actions, if any, he has taken to resolve them.

In response to July 2023 Government interrogatories Applicant listed eight SOR debts, SOR ¶¶ 1.j, 1.l, 1.m, 1.o, 1.q, and 1.s-1.u. He admitted that each debt was unpaid and that he had been made no arrangements to pay them. He stated he had an agreement with the IRS to pay his past due taxes but had gotten further behind with other bills. He also cited being laid off for several months before the COVID pandemic started. He stated he had obtained a lawyer to handle his finances and with his lawyer's assistance he planned to "keep a good handle" on his credit and taxes. (GE 2 at 5-12.)

When Applicant submitted his July 2022 SCA, he disclosed tax issues from 2010 through 2016. He also listed seven delinquent debts. He listed the reason for each debt as, "couldn't afford to pay," and in another section of his SCA stated he was in the process of resolving the debt. (GE 1.)

Applicant attributed his credit problems to COVID. He stated he was laid off just before COVID and spent 13 months from late 2019 until 2021 trying to find work, which resulted in him getting in debt. He also cited needing surgery that kept him out of work for almost a year from June 15, 2023 to April, 20, 2024. While recovering from surgery he

received disability pay, which was not enough for him to pay all of his bills. He used his available financial resources to get his Bankruptcy done. (Tr. 14-15, 23-24.)

The most recent credit reports reflect that Applicant's March 2024 Chapter 7 Bankruptcy, which was finalized in July 2024, discharged much of his debt. (GE 6, GE 7, GE 9.) Five SOR debts (SOR ¶¶ 1.j, 1.k, 1.m, 1.n, 1.s) totaling \$7,046 appeared on the most recent credit report prepared on December 4, 2024, as discharged in Bankruptcy. All of his accounts appeared on the Official Form 106E/F of his bankruptcy filing. (GE 7 at 19-32.) He earns \$25.96 an hour and after paying his bills he typically has \$150 left in his checking account. When he was out of work from June 2023 to April 2024, he received disability income. During this period his company paid his health insurance, and he owes his company \$3,000. He started looking into Bankruptcy after a comment about Bankruptcy by the background investigator conducting his interview. He followed up on the comment and concluded filing bankruptcy was in his best interest. He confirmed that during the Bankruptcy process he "had to do counseling at the beginning and at the end of the Bankruptcy." (Tr. 20-21, 25, 36-38.)

Applicant testified he did not know he had missed his Federal tax year 2020 income tax filing until this matter arose. He plans to have someone help him take care it in January 2025. He did not which service he would use or how much it may cost. He typically uses a common commercial tax software product to file his taxes. He thought he had filed the tax return and that it had been accepted. He cited not having enough money to hire someone to help him file his taxes because he used all of his money "towards the Bankruptcy" and the money he owes his company for covering his health insurance. (GE 3; Tr. 21-26.)

Applicant had a payment arrangement for his delinquent 2010 Federal taxes, but he could not remember when he made his last payment, "it's been some years" but he noted he still has access online. He pays online whenever he can afford it. He stated he thought he paid \$25 "maybe a month ago online." He testified he was not responsible back then. He estimated he owed the IRS \$15,000. He has overdue tax balances for tax years 2013-2016, 2021, and 2022. He has not been in contact with the IRS to make a better payment arrangement and makes payments when he can online. His bankruptcy filing list showed that he owed \$16,000 in overdue Federal taxes, with the tax debt incurred between tax years 2009 and 2018. (GE 3; GE 7 at 18, 31; Tr. 25-32.)

Applicant acknowledged he had a state tax debt of \$80 that was not alleged in the SOR. He obtained an extension but failed to make the payment when due. He stated he could not afford to pay, "I haven't had the extra to pay it." (Tr. 32-33.)

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 other record evidence 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 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(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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 personal debts were frequent, recent, and not all occurred when he was laid off and impacted by COVID. He recently resolved his nontax delinquent debts through Bankruptcy. However, insufficient time has elapsed to establish that his financial issues are unlikely to recur, and his behavior cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not established. The conditions cited by Applicant, being laid off just before COVID and then spending 13 months trying to find work as well as the surgery that kept him out of work for almost a year from June 2023 to April, 2024, are conditions beyond his control. However, Applicant had a significant amount of delinquent debt for several years, debts which he only began seriously to address when the clearance application process commenced. His financial condition since 2017 has been poor. He has ongoing tax issues going back to 2010. Applicant's circumstances raise serious concerns about his judgment and reliability, concerns which cannot be successfully mitigated by the debts he resolved after his security clearance interview. Delaying the bankruptcy action until the security clearance application process was an unreasonable and irresponsible course of action.

AG ¶ 20(c) is partially established. Although Applicant received financial counseling as part of the bankruptcy process, less than a year has elapsed since his debts were discharged, and he has not yet established "clear indications" that his financial problems are under control.

AG ¶ 20(d) is not established. There is insufficient evidence that Applicant has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve his tax debts. While he has apparently resolved his nontax debts through bankruptcy, he acted after he met with a background investigator and queued in on a comment by the investigator that bankruptcy might be a means to resolve his financial situation. "Although bankruptcy is a remedy available to debtors, an applicant must do more than merely show that he or she relied on a legally available option such as bankruptcy in order to claim the benefit of mitigation." ISCR Case No. 23-00908 at 2 (App. Bd. July 30, 2024) (citation omitted). Furthermore, it is well established "an applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information." See ISCR Case No. 16-01211 at 4 (App. Bd. May 30, 2018).

AG ¶ 20(g) is not established. Applicant's TY 2020 Federal income tax return has not been filed, he has not complied with previous installment agreements with the IRS, and he presented no evidence of a current installment plan for his unpaid federal or state

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. 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 applied the adjudicative factors in AG ¶ 2(d). I considered the documented failure to file his TY 2020 Federal income tax return, other late tax filings and tax debts along with the late state tax payment that he disclosed at the hearing in my whole person analysis. 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 financial considerations security concerns.

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.x:

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.

Charles C. Hale
Administrative Judge