



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



In the matter of:

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

06/11/2025

Decision

BLAZEWICK, R. B., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On July 8, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The action was taken under Executive Order 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 responded to the SOR on October 17, 2024, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on December 18, 2024. 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 January 7, 2025, and he did not respond. The case was assigned to me on April 2, 2025. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

The SOR alleges Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$27,665 for tax year 2013 (SOR ¶ 1.a) and in the approximate amount of \$2,974 for tax year 2022 (SOR ¶ 1.b). It also alleges that he failed to file federal income tax returns for tax years 2020, 2021, and 2023 (SOR ¶ 1.c), and that he has four delinquent debts totaling approximately \$7,652 (SOR ¶¶ 1.d-1.g). He denied the 2013 tax debt, failing to file his tax returns, and one of the delinquent debts. He admitted the remaining allegations. All the allegations are supported by Applicant's response to the SOR, his interrogatory response, and his 2022, 2023, and 2024 credit bureau reports (CBR). (Items 4-7)

Applicant is 59 years old. He has been employed by his current employer since 2022. He graduated high school in 1983. He served in the U.S. Air Force from 1986 to 1987 and received an honorable discharge. He has been married since 1994 and was previously married from 1991 to 1993. He has two adult children and two adult stepchildren. (Item 3)

In his 2022 security clearance application, Applicant indicated that he owed federal taxes but did not provide any details. In his 2023 interview with a government investigator, he explained that in 2013 he was self-employed, and that year the economy experienced a downturn that caused him to lose out on work. When he filed his tax return for that year, he did not have the money to pay the taxes owed. He estimated that he owed approximately \$28,986 and stated that he had made sporadic payments over the years, but that he did not have a payment plan in place. He also stated that he had filed federal tax returns for every year as required, and that he did not owe taxes for any other tax year. He was not asked about any other delinquent debts. (Items 3-4)

A tax account transcript was not provided for tax year 2013, but Applicant reported a balance of \$27,665 in his response to interrogatories. (SOR ¶ 1.a) In his response to the SOR, he denied the allegation, stating that the ten-year collection period had expired and that it was uncollectable according to the IRS website. He did not provide proof of its uncollectable status, nor did he provide proof that he has paid this debt. This allegation is unresolved. (Items 2, 4)

A tax year 2022 tax account transcript dated June 17, 2024, shows an account balance plus accruals of \$3,068. It also shows one payment of \$100 was made on April 21, 2024. Applicant reported a balance of \$2,974 on his response to interrogatories. (SOR ¶ 1.b) In his response to the SOR, he admitted the allegation and stated that a payment plan was established, and the first payment was made, but he did not provide any proof of a payment plan, or of payments made toward the debt. This allegation is unresolved. (Items 2, 4)

Tax account transcripts for tax years 2020 and 2021, dated June 17, 2024, both state, "no tax return filed." (SOR ¶ 1.c) In his response to the SOR, dated June 18, 2024, Applicant stated both years were filed, and that he had not filed his tax return for

tax year 2023. In his response to the SOR, he denied the allegation, listing 2020 as “unemployed,” 2021 as filed with a refund due, and 2023 as filed on October 15, 2024. He did not provide any supporting documentation for his statements. This allegation is unresolved. (Items 2, 4)

The first alleged consumer debt is an account with Synchrony Bank/PayPal Credit that has been charged off in the approximate amount of \$3,347. (SOR ¶ 1.d) This is reflected on the December 2023 CBR and was listed on the December 2022 CBR as 60 days past due. It is not listed on the June 2024 CBR. In his response to the SOR, Applicant denied the account, stating it was an unknown account. He did not provide any evidence that the account is not his, nor any evidence of efforts to dispute the legitimacy of the debt. This debt is unresolved. (Items 2, 5-7)

The second alleged consumer debt is an account with Wells Fargo for a home furnishings revolving charge account that has been charged off in the approximate amount of \$3,000. (SOR ¶ 1.e) This account is listed on all three CBRs. In his response to the SOR, Applicant admitted the allegation, stating he has an online payment plan. He did not provide any evidence of the payment plan, or that he has made any payments toward this debt. This debt is unresolved. (Items 2, 5-7)

The third alleged consumer debt is an account originally with Citibank but currently owned by Calvary Portfolio Services, in collection for approximately \$883. (SOR ¶ 1.f) This account is listed on all three CBRs. In his response to the SOR, Applicant admitted the allegation, stating he had a payment plan through a bank draft. He did not provide any evidence of the payment plan, or that he has made any payments toward this debt. This debt is unresolved. (Items 2, 5-7)

The fourth alleged consumer debt is an account with Kohls/Capital One that has been charged off in the approximate amount of \$422. (SOR ¶ 1.g) This account is listed on all three CBRs. In his response to the SOR, Applicant admitted the allegation and stated that he is contacting the creditor to pay the total amount. He did not provide any evidence of payments made toward this debt. This debt is unresolved. (Items 2, 5-7)

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 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.

Applicant's admissions and the evidence in the FORM establish the following 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 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 overdue 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 authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's accumulation of delinquent tax debt and failure to file his returns has been an ongoing and recurring course of conduct from 2013 to at least 2023 that casts doubt on his current reliability, trustworthiness, and good judgment. An applicant who fails repeatedly to fulfill their legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 15-06707 at 3 (App. Bd. Aug. 15, 2017). It appears Applicant never paid the 2013 tax debt, and he has not provided any proof that he is paying the 2022 debt, nor proof that he filed all his tax returns as required. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

While the 2013 debt may have been incurred due to circumstances beyond his control, specifically a business downturn, he did not act responsibly toward that debt. The status of the debt as uncollectable due to the passage of time is not mitigating. As the Appeal Board summarized in ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018):

"The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner." (Quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011))

None of the mitigating conditions fully apply to the tax debt and failure-to-file allegations.

Likewise, Applicant's consumer debt is an ongoing concern that casts doubt on his current reliability, trustworthiness, and good judgment. He did not provide proof that he disputed or otherwise resolved the Synchrony/PayPal account that he denied. He made assertions about paying two of the debts, but as with his tax-related assertions, he did not provide documentation, so there is no way to confirm whether he is in compliance with payment plans and is making timely payments. He stated he planned to pay the fourth debt, but intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case

No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). None of the mitigating conditions apply to the consumer debt accounts.

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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 under Guideline F, financial considerations.

Formal Findings

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-g: **Against Applicant**

Conclusion

I conclude 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.

Robert B. Blazewick
Chief Administrative Judge