



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



In the matter of:

Applicant for Security Clearance

)
)
)
)

ISCR Case No. 24-01671

Appearances

For Government: William H. Miller, Esq., Department Counsel

For Applicant: *Pro se*

06/02/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 2, 2022. On October 11, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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), which became effective on June 8, 2017.

The record does not reflect when Applicant received the SOR. He answered it on October 7, 2024, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 9, 2024. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 19, 2025, and timely responded. His response was marked as Applicant's Exhibit (AX) A and admitted in evidence. The case was assigned to me on May 7, 2025.

Findings of Fact

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

Applicant is a 42-year-old employee of a federal contractor. He graduated from high school in May 2002. He served on active duty in the U.S. Navy from August 2001 to August 2009 and received an honorable discharge. He worked for a federal agency from April 2012 until a date not reflected in the record, when he left his job, seeking a position with higher pay. The record does not reflect when he began working for his current employer. When he submitted his SCA in September 2022, he indicated that he was still employed by his former employer.

Applicant married in January 2009 and divorced in June 2020. He has no children. He has never held a security clearance.

In Applicant's SCA, he disclosed that he failed to timely file his federal and state income tax returns for 2019. He explained that as part of his divorce, he agreed to file a separate return for 2019, and he forgot to file. (AX A at 2) As of the date of his SCA, he had taken no action to file the past-due return.

In the same SCA, Applicant disclosed several delinquent debts, including the two debts alleged in SOR ¶¶ 1.a and 1.b. He attributed them to his divorce, COVID-19, reduced income, and increased housing expenses. (FORM Item 3 at 32-34)

In September 2023, the DCSA sent him interrogatories about the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c. He responded to the interrogatories and stated that none of the three debts had been paid or were being resolved. (FORM Item 4 at 4-5) The debts are reflected in credit reports from September 2022, October 2023, and July 2024. (FORM Items 5, 6, and 7)

In December 2024, Applicant received a bonus of \$8,526. In his response to the FORM, he stated that he used the bonus to resolve the delinquent debts alleged in the SOR. (AX A at 2, 7) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: credit-card account charged off for \$10,692. In Applicant's answer to the SOR, he provided evidence of an agreement dated October 24, 2024, two weeks

after he answered the SOR, to settle the debt for \$6,420 by making 11 monthly installments, beginning on October 25, 2024. In his response to the FORM, he provided evidence of a payment of \$3,075 as a final settlement for less than the full balance. (AX A at 9)

SOR ¶ 1.b: charge account charged off for \$19,652. In Applicant's answer to the SOR, he provided evidence of a \$500 payment on October 27, 2024. (SOR Response at 7) In his response to the FORM, he submitted evidence that he made \$500 payments in October, November, and December 2024, and a \$1,500 payment in January 2025. (AX A at 6)

SOR ¶ 1.c: medical account placed for collection of \$540. In Applicant's answer to the SOR, he stated that the account was not a medical account, and he provided documentation that it was paid. (AX A at 6)

SOR ¶¶ 1.d and 1.e. The SOR also alleged that Applicant failed to file his federal and state income tax returns for 2019. In his response to the FORM, he submitted evidence that a professional tax preparer filed his federal and state returns on January 28, 2025. The returns reflect that he owes federal income tax of \$1,634 and is entitled to a state refund of \$342. (AX A at 10-13)

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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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* 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 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; 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 delinquent debts were recent, frequent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's divorce and the financial impact of COVID-19 were conditions largely beyond his control. However, he has not acted responsibly. Although he received a substantial bonus in December 2024, which he used to resolve the debts alleged in the SOR, he did not begin to resolve those delinquent debts until he received the SOR and realized that his debts were an impediment to obtaining a security clearance. Evidence of past irresponsibility is not mitigated by

payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(d) is not established. Applicant has resolved the debts alleged in SOR ¶¶ 1.a and 1.b. However, payment of delinquent debts when forced to do so by the security clearance process is not a “good-faith” effort to resolve them. See ISCR Case No. 10-05909 at 3 (App. Bd. Sep. 27, 2012).

AG ¶ 20(g) is established. However, the establishment of some mitigating evidence does not compel a favorable security-clearance decision. ISCR Case No. 11-14784 (App. Bd. Jan. 17, 2014). The fact that Applicant has filed his past-due returns “does not preclude careful consideration of Applicant’s security worthiness based on longstanding prior behavior evidencing irresponsibility.” ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, the timing of Applicant’s filing of his past-due state and federal income tax returns in January 2025, well after receiving the SOR, undercuts the weight such remedial action might otherwise merit. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017)

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the 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 have considered Applicant’s honorable military service and his long service with another federal agency. I have considered his belated filing of his tax returns and his eventual resolution of the debts alleged in the SOR, all of which occurred while he was under pressure to qualify for a security clearance.

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 by his delinquent debts and failure to timely file his income tax returns for 2019.

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.e:	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.

LeRoy F. Foreman
Administrative Judge