



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



In the matter of:)
)
) ISCR Case No. 24-01208
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

08/08/2025

Decision

BLAZEWICK, Robert B., Chief 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 September 27, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.

Applicant responded to the SOR on November 15, 2024, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on January 29, 2025. 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 February 6, 2025. He timely submitted documentation which was labeled as Applicant's Exhibits (AE) A through I. The case was assigned on May 30, 2025. The Government exhibits included in the FORM and AE A-I are admitted in evidence without objection.

Findings of Fact

The SOR alleges Applicant failed to file Federal (SOR ¶ 1.a) and state (SOR ¶ 1.b) income tax returns for tax years 2009-2014, and that he owes \$831 in delinquent state income tax for tax year 2017 (SOR ¶ 1.c). He admitted failing to file the tax returns but denied owing \$831 in state income tax. The failure to file allegations are supported by Applicant's 2017 security clearance application (SCA), his interrogatory response, and his response to the SOR. The evidence does not support the allegation that Applicant is delinquent on his state taxes for tax year 2017. (Items 2, 4, 5)

Applicant is 60 years old. He has worked for a defense contractor since about August 2023. He has some amount of college education and was currently enrolled in community college as of the signing of his SCA in 2023. He has been married since 2010 and has three minor children. (Item 3)

In his 2017 SCA, Applicant indicated that he failed to file and pay his 2010, 2012, 2013, and 2014 Federal and state returns and taxes. He explained that he had a business that failed and that he hired an accountant to help him with the unfiled returns, but he ran out of money to pay the accountant. Applicant said that although most of those years he sent in estimated payments, the accountant still estimated that Applicant owed about \$15,000. He stated, “[u]ntil I can afford to finish and file my taxes so we know exactly what is owed, I am unable to work out a payment arrangement.” Applicant did not report any tax issues on his 2023 SCA, presumably because his tax issues fell outside the seven-year reporting window. (Items 3, 5)

In his response to interrogatories and in AE A, Applicant explained that in about 2003, he and his mother purchased a coffee shop business. She handled the bookkeeping for the business, but unfortunately at the same time, she started to develop Alzheimer's disease. It took some time before Applicant realized not only that she was not up to the task, but that her illness had caused the business's finances and recordkeeping to fall into complete disarray. He worked with several accountants to remedy the issues, but they were missing documents, and Applicant did not know how to locate them. Eventually Applicant was no longer able to afford an accountant as the business declined and his mother died. He could not pay the rent, he lost the lease to the business, and it closed. Federal tax account transcripts from 2010 to 2014 reflect that no returns were filed those years, and the 2009 records could not be found. Payments were sent in 2012 and 2011, but the 2011 payment was dishonored. In his most recent submission, AE A, he argues “there are mitigating circumstances that are not entirely my fault that made filing impossible.” (Item 4; AE A, D)

Applicant struggled financially for years after the business closed but has since been able to find financial stability. He does not have any delinquent debt on his credit reports. He has annually earned between \$37,000 and \$60,000 since 2017. He provided documentation showing that he timely filed Federal and state tax returns from 2015 to 2023. He received thousands of dollars in tax refunds every year except for his state taxes in 2017, when he owed \$831, and in 2018, when the Federal government initially refunded

him and then assessed additional tax, which was paid with his 2021 refund. His 2015 refund went to taxes owed in tax years 2006 and 2011. There is no evidence that the 2017 state tax owed was ever delinquent, and in fact Applicant provided verification in AE C that he does not owe any state taxes. (Items 4, 6, 7; AE A-C, E-G)

Applicant was rated “fully satisfactory” in his most recent work performance review. The review praises the significant progress Applicant has made in his job and his methodical approach to the work. A friend and pastor, Reverend W, provided a letter of support. He praised Applicant’s trustworthiness, dependability, and integrity. He stated that he was familiar with the situation that led to Applicant’s tax issues, and he believes the combination of Applicant’s mother’s declining health, the complex tax issues, and the loss of critical documents caused Applicant’s responsibilities to become overwhelming. (AE H, I)

Policies

This case is adjudicated 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.

“[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.

The following disqualifying conditions are relevant:

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 evidence in the FORM and Applicant's admissions establish AG ¶¶ 19(a), (c), and (f) for SOR ¶¶ 1.a and 1.b. There is no evidence that he was delinquent on paying his 2017 state taxes, therefore SOR ¶ 1.c is found for Applicant.

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) only partially applies. Applicant has not incurred new tax debt since at least 2015 and has timely filed all required returns since that year. The reasons for his unfiled returns are due to fairly unusual circumstances beyond his control, *i.e.*, the impact of his mother's illness on his business's records and his inability to afford an accountant after his business closed. Given that he is no longer a business owner, it is unlikely he will fail to file in the future. Applicant still has not filed his delinquent tax returns, however, and has been advised that he likely owes delinquent taxes from those years. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018). Though the tax years in question are over ten years ago, the unfiled returns and possible taxes owed are a

current and ongoing concern that casts doubt on his current reliability, trustworthiness, and good judgment.

While the returns may have been unfiled due to circumstances beyond his control, he ultimately did not act responsibly under the circumstances. He initially hired accountants to help him, and he sent one successful payment to the Federal government, but he stopped trying to resolve the issue when he could no longer afford the accountant. The earliest information we have regarding Applicant's ceasing work with an accountant is his 2017 SCA, so it appears he stopped using an accountant sometime prior to completing that document.

Since at least 2017, if not earlier, Applicant has made no progress on his tax issues apart from money involuntarily taken out of his 2015 Federal tax return to pay taxes owed for 2011 and 2006. Although he wrote in his 2017 SCA that he cannot finish filing his returns until he can afford it, it is unclear why he cannot currently afford addressing his tax issues, which he now describes as "impossible." He has worked at his current employer since 2023. Though he makes a modest income, he has been receiving large tax refunds since 2016. He has no other delinquent debt. It appears he has resolved his other previous financial issues related to his business closing. He has not demonstrated why he cannot now begin to address his tax issues, and instead gives the impression that he has given up on them entirely. AG ¶¶ 20(b), (d), and (g) are not established.

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-b: Against Applicant
Subparagraph 1.c: For 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