



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



In the matter of:)
)
) ISCR Case No. 24-01062
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O'Reilly, Esq., Department Counsel
For Applicant: *Pro se*

06/11/2025

Decision

BLAZEWICK, R. B., Chief Administrative Judge:

Applicant mitigated the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On September 26, 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 (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 responded to the SOR on October 21, 2024, and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on November 21, 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 December 20, 2024. He timely submitted documentation which was labeled as Applicant's Exhibits (AE) A and B. The case was assigned on March 4, 2025. The Government exhibits included in the FORM and AE A and B 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 \$25,485 for tax years 2014 and 2017. (SOR ¶ 1.a). He denied the allegation without further explanation, though he later submitted one additional document. The allegation is supported by the tax transcripts contained in the interrogatory response, Applicant's security clearance application (SCA), personal subject interviews (PSI), and personal tax debt statement. (Items 3-6, 9)

Applicant is 61 years old. He has worked for various federal contractors since 2016 but has been employed by his current employer since 2022. He has a bachelor's degree, which he earned in 1993. He did not serve in the military. He married in 1994, divorced in 2006, and has two adult children. (Item 3)

In his 2021 PSI, Applicant stated that he had struggled financially since his 2006 divorce due to his high child support payments. He indicated that from 2006 to 2014, he would enter into repayment agreements with the IRS to pay his tax debts. In 2014, he left his job, was unemployed for two months, and then took a low-paying part-time job. He was not making enough money to pay his expenses, his child support, and his tax debt. His ex-wife obtained a garnishment of 55% of his wages and the IRS placed a lien on his assets in approximately 2014. From 2015 to 2016, Applicant obtained health insurance through the Affordable Care Act (ACA). He thought he had canceled the ACA insurance plan when he began receiving insurance through a new employer, but in 2018 it was discovered that the ACA plan had improperly paid \$4,800 in prescription drug charges, and he was found at fault and liable to pay back that amount to the IRS. In 2019 he entered into an agreement with the IRS whereby they would retain all tax refunds until his tax debt was paid in full. At the time of his interview, he estimated his total tax debt to be approximately \$51,000. (Item 6)

After his 2021 PSI, Applicant provided the interviewer with a letter from a tax resolution company dated February 3, 2020. The letter stated that the company had worked to reach an agreement with the IRS for Applicant to be in a "currently non-collectible status," which they described as "the best outcome for you." They explained that this status was essentially "an installment agreement without payments." They stated that Applicant still owed the debt, that he could make voluntary payments toward the debt, that penalties and interest will continue to accrue, and that the IRS will file a federal tax lien due to the status. They also explained that the terms of the agreement were that Applicant must file his tax returns on time and not owe future tax debt. (Item 7)

Applicant reported his tax issues on his 2023 SCA, stating that he failed to pay taxes in 2014 and 2018. He further stated that he is in a non-collectible status with the amount secured with a lien, and that he is paying the debt back through his tax refunds. He explained that the 2014 tax debt was approximately \$10,000 and was due to a combination of his employer failing to make timely salary payments, which caused him to take a low-paying job, and his child support payments increasing to 55% of his income. He explained that the 2018 tax debt was approximately \$4,800 and was due to a mistake with his health insurance for which he was found at fault. (Item 3)

In his 2023 PSI, Applicant stated that he made payments to the IRS and used his tax refunds to pay off his 2014 and 2018 tax debts. He stated that he paid off the debts in June 2023 and that the balance of the taxes due was zero. There is no evidence in the record that corroborates this statement and in his response to the FORM, the Applicant did not comment on whether the report accurately reflected the information he provided the investigator. Though the report is unsworn and unadopted, Applicant waived any objection to the document. While the information is clearly incorrect, given the nature of the document being a summary of an interview, there is no way to ascertain whether this was an intentional falsehood or a mistake on either the Applicant's or the interviewer's part. (Item 5)

In his interrogatory response, Applicant explained that he experienced financial hardship after his divorce because he took on all the marital debt and took on two child support payments, which left him living paycheck to paycheck. He struggled significantly trying to find steady, full-time work for about ten years after his divorce and went through several periods of unemployment and underemployment. In 2017 he hired an attorney to assist him with his tax debts whereby he would pay \$14 a month, but in 2018 he received notice of the improper ACA payment issue, and the agreement was voided. He stated that he contacted the company that provided the attorney for help, and it was determined that he could not pay all the back taxes. He further stated that his attorney then died from COVID which resulted in his tax return (presumably 2019) being filed late. It is unclear if the company he refers to in his response to interrogatories is the same company that sent him the letter in 2020. Applicant also provided IRS tax transcripts for tax years 2014 to 2022 in his interrogatory response. All transcripts are current as of February 27, 2024. (Item 4)

Tax year 2014 has a balance of \$18,961. The return was filed November 2017. A late payment penalty and interest was charged in 2018. Multiple entries reflect an installment agreement was pending from December 2017 until an installment agreement was established in February 2018, but no payments are listed on the transcript. On January 22, 2020, the transcript shows two entries: "balance due account currently not collectible – due to hardship" and "no longer in installment agreement status." Late payment penalties and interest were charged in 2021 and 2022. On January 9, 2023, an entry reflects that the account was "currently considered

collectable”¹ but on October 23, 2023, the final entry on the transcript shows that the tax period was “blocked from automated levy program.” (Item 4)

Tax year 2017 has a balance of \$6,524. The return was timely filed, initially pending a refund, and the transcript reflects an additional tax assessed by examination in 2019, as the Applicant described. As with the 2014 transcript, the 2017 transcript reflects the same “currently not collectible – due to hardship” status on January 22, 2020, penalties and interest in 2021 and 2022, and entries identical to the 2014 transcript on January 9, 2023, and October 23, 2023. The transcript does not reflect any payments made toward this debt. (Item 4)

Returns for tax years 2015, 2016, 2018, 2020, 2021, and 2022 were all timely filed and have zero balances. As Applicant reported, his 2019 return was filed late, in March 2021, presumably following the death of his attorney. His 2019 transcript reflects a zero balance. Refunds he received in 2015-2020 were automatically applied to balances he owed from 2005 and 2007 tax debts. He had small balances owed in 2021 and 2022, which he paid on time with his returns. (Item 4)

In his interrogatory response, Applicant provided a letter from his state revenue service verifying that he has filed all state tax returns and paid all state taxes due. He also completed a personal financial statement showing that he has about \$10,000 in a 401(k) and a monthly net income remainder of approximately \$1,284. His tax transcripts show a general trend of increased income over the period from 2017 to 2022. (Item 4)

Applicant submitted a personal tax debt statement after submitting his answer to the SOR. This statement is generated from the company that assisted him in obtaining the non-collectible status with the IRS. It is undated but appears to be from 2024. It reflects a 2012 tax debt with a total balance of \$21,615 and a “statute date,” presumably the date after which the IRS cannot collect on a debt, of February 12, 2028; a 2014 tax debt with a total balance of \$19,973 and a statute date of January 1, 2028; and a 2017 tax debt with a total balance of \$6,858 with a statute date of October 28, 2029. It indicates that no liens have been filed for tax years 2012 to 2024. This last piece of information conflicts with the lien filing record submitted by the government showing a federal tax lien filed on February 21, 2018, for \$19,100. The tax transcripts, however, do not mention any levies or liens for tax years 2014-2022. (Items 4, 8-9)

In his response to the FORM, Applicant submitted additional documentation to show that he has paid his local city taxes, which have a zero balance. He also submitted a January 20, 2025, letter from a client relations advisor at the tax resolution company he has been working with for the past five or more years. With regard to Applicant’s compliance with the original 2020 agreement, the advisor stated:

Your current taxes are always most important to the IRS and since we have helped you get back on track you have filed every year and paid your

¹ The IRS uses both spellings, “collectible” and “collectable.”

taxes to make sure you are following up with the IRS guidelines to remain in your Currently Not Collectible status.

The advisor further assured Applicant that the IRS continues to monitor his account until they feel that he may no longer be in a financial hardship, and that all he has to do is keep filing his returns on time and not create any new tax debt to remain in good standing with the IRS. As in the 2020 letter, the advisor referred the Applicant's resolution as "a payment plan without a payment" and told Applicant that the company will continue to monitor his account and will let him know if anything changes. The advisor concluded:

All in all, your status with the IRS is still in good standing and as long as you continue paying your taxes moving forward you are protected under the Taxpayer Bill of Rights ... as of today you are in a resolution with the IRS and in good standing in their eyes. (AE A, B)

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; 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) partially applies. Applicant has not incurred new tax debt since 2017 and the tax debt that he incurred was due to fairly unusual circumstances, which indicates that it is unlikely he will incur new tax debt. The tax debt that he has accumulated in the past, however, is still owed to the IRS and is a current concern, therefore, this mitigating condition does not fully apply.

AG ¶¶ 20(b), 20(d), and 20(g) apply. Applicant was unable to pay his tax debt in 2014 due to a lack of employment and a large increase in his child support payments. He incurred tax debt in 2017 due to accidentally incurring charges on a medical insurance policy he thought he had cancelled. Both of these are circumstances largely beyond his control. He has acted responsibly since 2017 when he hired an attorney to help him with a payment arrangement after filing his 2014 tax return. Unfortunately, that arrangement was nullified once the 2017 tax debt issue arose, but Applicant continued working with an attorney and tax resolution company to reach an agreement with the IRS whereby he is in a "currently not collectible" status. All of his tax refunds so far have been applied to his 2005 and 2007 tax debts but presumably his future refunds will eventually be applied to his later tax debts, including 2014 and 2017. He is required to file all future tax returns on time and not accumulate any new tax debt, terms which he has fully complied with since 2020.

The government argues that Applicant's financial situation has improved to the point where he should be doing more to address his debt because he has had steady employment and higher levels of income since 2017, yet he has maintained his non-collectible status with the IRS. The government is correct in its observation that Applicant's income, according to his tax transcripts, has trended upward over time, and in fact he reported a monthly net income remainder of over \$1,200. He has, however, asked for and been accepted into a non-collectible status that the IRS offers taxpayers dealing with financial hardship. Both his tax transcripts and the letters from the tax resolution company indicate his non-collectible status is current and legitimate. The evidence and calculation the IRS used to determine Applicant's hardship status is not in evidence in this proceeding and it is not reasonable to presume to know better than the IRS whether that is an appropriate status for the Applicant to have. A security clearance adjudication is not a proceeding aimed at collecting an applicant's debts, but rather, a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. ADP Case No. 22-00180 at 3 (App. Bd. Apr. 22, 2024). What constitutes responsible behavior depends on the facts of a given case and the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern. ISCR Case No. 09-08462 at 4 (App. Bd. May 31, 2011). In this case, Applicant sought out a company that could help him address his tax debts and then followed the advice of that company. That company told him explicitly that this status is "the best outcome" for him. He has followed their advice for the past five years and, as recently as a few months ago, they have assured him that he has done everything right and is in good standing with the IRS. Nothing in the tax transcripts contradicts that assertion. It is unreasonable to hold him to a standard of perfection and expect that he should have ignored the professional advice he sought out and instead have more aggressively paid back his tax debt.

Furthermore, if Applicant's income continues to increase to the point that the IRS no longer finds him eligible for the non-collectible status, he would then be in a much better position to come up with a new arrangement to suit his income level. He already has a relationship with a tax resolution company that can continue to advise him, he will have decreased his tax debt through years of refunds that have been put towards his tax debt, and he will likely have an even higher monthly net income remainder if his income increases. He has a track record of fully complying with his current IRS arrangement and there is no reason to think that he would not fully comply with a new arrangement in the future.

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 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: FOR APPLICANT

Subparagraphs 1.a: For Applicant

Conclusion

I conclude it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Robert B. Blazewick
Chief Administrative Judge