



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 14-05879  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: Greg D. McCormack, Esq.

03/10/2016

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**Decision**

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FOREMAN, LeRoy F., 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 on March 12, 2013. On February 7, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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 September 1, 2006.

Applicant answered the SOR on March 18, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 27, 2015, and the case was assigned to an administrative judge June 6, 2015. The administrative judge granted Applicant's request for postponement on June 30, 2015. The case was

reassigned several times due to scheduling difficulties and the geographical separation between Applicant and his counsel. It was reassigned to me on November 24, 2015. On November 30, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 15, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on December 23, 2015.

I kept the record open until January 14, 2016, to enable Applicant to submit additional documentary evidence. He timely submitted Supplemental Exhibits (SX) A through H, which were admitted without objection.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all the allegations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 40-year-old business software architect, employed by a defense contractor since February 2013. (AX A.) He also is the owner and sole employee of a computer network support company. He has owned the company since May 1998. His company is a Subchapter S corporation, through which he reports the flow-through of company income and losses on his personal tax returns and is assessed taxes at individual income tax rates. (AX A.) The company currently is inactive and generates no income. (AX B-3.)

Applicant graduated from college with a bachelor's degree in computer science in August 1998. He has never married. He has never held a security clearance.

Applicant admitted in his security clearance application and a follow-up interview with a security investigator that he had not timely filed his federal and state income tax returns or paid the taxes due for tax years 2006-2011. ((GX 1 at 24-27.) GX 2 at 2-3.) His credit bureau report (CBR) dated March 27, 2013, reflected a federal tax lien for \$31,436, filed in December 2012 (SOR ¶ 1.j); an unsatisfied judgment for \$235 for homeowners' association fees, filed in June 2012 (SOR ¶ 1.m); a medical collection account for \$323 (SOR ¶ 1.n); and a medical collection account for \$171, referred for collection in in July 2012 (SOR ¶ 1.o). This CBR also reflected two other judgments filed by the same homeowners' association in October 2010 and December 2011, which were satisfied in March 2011 and April 2012. (GX 3.)

Applicant's June 2014 CBR reflected seven medical collection accounts for \$308, \$129, \$82, \$69, \$57, \$22, and \$22, referred for collection between June 2009 and October 2013 (SOR ¶¶ 1.c-1.i); a federal tax lien for \$51,887, filed in August 2013 (SOR ¶ 1.k); a federal tax lien for \$264,000, filed in April 2014 (SOR ¶ 1.i); and the December 2012 tax lien also reflected in the March 2013 CBR. (GX 4.)

Applicant had major surgery in 2004. He suffered complications from that surgery from 2006 to 2009, requiring frequent medical treatment and hospitalization.. (Tr. 30-34.) In 2010, his doctors identified and resolved the cause of his surgical complications. (SX E through G) In addition to his surgical complications, Applicant also required back surgery in 2012 and periodic medical treatment for his back programs after the surgery. (Tr. 42-44; SX H.)

In July 2005, Applicant moved from the state where his business was located to a state where his current employer is located, but he continued to use the tax accountant in his former home state. (GX 1 at 8-9; Tr. 30.) He prepared the information for his tax returns but did not submit it to his tax accountant. Because his company is a Subchapter S corporation, he needed to file his corporate returns before he could file his personal returns, and he relied on his tax accountant to prepare the corporate and personal returns. In 2010, Applicant received the tax returns for 2006, 2007, and 2008 from his accountant, but he did not file them. (AX B-9; Tr. 27-34.)

Applicant's tax accountant passed away in February 2011. A new tax accountant prepared the past-due returns for 2009 and 2010 and sent them to Applicant in August 2012. The accountant sent Applicant the 2011 return in December 2012 and the 2012 return in July 2013. (AX B-9 at 70-73.)

Applicant's IRS account transcripts reflect that he filed the 2007 return in September 2011, the 2008 return in November 2012, the 2009 and 2010 returns in March 2013, the 2011 return in January 2013, the 2012 return in August 2013, and the 2013 return in June 2014. His 2014 return was timely filed in April 2015. (SX B.) The record does not reflect when he filed his 2006 return.

In September 2014, Applicant entered into a payment agreement with the Internal Revenue Service (IRS), providing for monthly payments of \$750. (AX B-7.) He made the required payments from September 2014 to April 2015. (AX B-8; SX B.)

Applicant submitted an Offer in Compromise to the IRS in May 2015, offering to pay \$27,500. (AX B-4; AX B-5.) He made a payment of \$5,500 as part of his offer. (AX B-6.) His offer was denied in December 2015, and his appeal of the denial is pending. (SX A.) He suspended the \$750 monthly payments pending a decision on his Offer in Compromise. (Tr. 57-58.)

Applicant testified that he paid all the medical bills alleged in the SOR, even though he knew some of them were inaccurate or duplicates. Many of the debts were small amounts for copayments. (Tr. 40-42.) He provided documentation that the medical collection accounts in SOR ¶¶ 1.c and 1.g were paid in December 2015 (SX C; SX D.) He did not document his payment of the other medical bills alleged in the SOR. The medical debts alleged in SOR ¶¶ 1.c and 1.g are reflected in Applicant's December 2015 Equifax CBR, and they are listed as disputed. The basis for the dispute is not reflected. The medical debts alleged in SOR ¶¶ 1.d-1.i, 1.n, and 1.o are not reflected in his Applicant's Equifax CBR or his December 2015 TransUnion CBR. (AX B-1 and AX

B-2.) None of the medical collection accounts were subject to the seven-year limitation of the Fair Credit Reporting Act.<sup>1</sup> Thus, the deletion of the medical debts alleged in SOR ¶¶ 1.d-1.i, 1.n, and 1.o indicates that they probably were resolved, either by payment or favorable resolution of a dispute.

Applicant testified that the judgment for homeowners' association dues, alleged in SOR ¶ 1.m, was for the year after he moved, but he paid the debt to remove it from his credit record. (Tr. 53-54.) During his May 2013 PSI, Applicant told the investigator that the three judgments for homeowners' association dues were the result of his frequent business travel and forgetfulness. (GX 2 at 3.) The most recent judgment is reflected on his December 2015 TransUnion CBR as disputed. The basis for the dispute is not reflected, and the dispute is not resolved. (AX B-2.)

Applicant's current net monthly pay is about \$3,362. (AX B-10.) His gross annual income is about \$140,000 (Tr. 29.) His current employer withholds federal and state income taxes from his pay, and he has medical insurance. (Tr. 44-46.)

Several of Applicant's colleagues and long-time friends submitted statements on his behalf. They describe him as extremely capable, dedicated, and trustworthy. (AX C.)

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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

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<sup>1</sup> Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years, or until the statute of limitations has run, which is longer. The exceptions to this prohibition do not apply to these debts. 10 U.S.C. § 1681c.

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.” See 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The SOR alleges that Applicant failed to timely file his federal income tax returns for tax years 2006-2013 (SOR ¶ 1.a); that he owes about \$254,984 in federal taxes (SOR ¶ 1.b); and that the IRS filed tax liens against him in 2012, 2013, and 2014 (SOR ¶¶ 1.j-1.l). It also alleges an unsatisfied judgment for homeowners’ association dues filed against him in 2012 (SOR ¶ 1.m), and nine delinquent medical debts (SOR ¶¶ 1.c-1.i, 1.n, and 1.o). Applicant’s failure to timely file his state income tax returns is not alleged.

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The tax liens alleged in SOR ¶¶ 1.j-1.l are for the debt alleged in SOR ¶ 1.b. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶¶ 1.j-1.l for Applicant.

Applicant's admissions, corroborated by his CBRs, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established for the delinquent tax returns. Applicant's medical problems and the death of his tax accountant in 2011 were largely beyond his control. However, he has not acted responsibly. His surgical complications were brought under control in 2010, and his back surgery was completed in 2012. His first tax accountant prepared the tax returns for 2006-2008 before his death in 2011, but Applicant did not file the 2008 return until November 2012, and he did not file the 2009, 2010, and 2011 returns until 2013. He did not begin his payment agreement with the IRS until September 2014.

AG ¶ 20(b) is not established for the unsatisfied judgment filed by the homeowners' association and the medical bills. These debts were not incurred because of conditions beyond his control. He failed to timely pay his association dues for three years, and he attributed it to frequent travel and forgetfulness. The unpaid medical bills were incurred and referred for collection after his surgical complications were under control and his back surgery was completed. He did not take any action to resolve them until he realized they were an impediment to obtaining a security clearance.

AG ¶ 20(c) is partially established. Applicant has not sought or received financial counseling, but he has made progress in resolving his federal income tax problems and paid some of the medical debts.

AG ¶ 20(d) is not fully established. "Good faith" within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant began resolving his tax problems in 2010, before he applied for a security clearance. However, he was dilatory and waited about six months after receiving his tax returns from his accountant before he filed them. He waited about a year before filing his late returns for 2011 and 2012. He negotiated a payment plan with the IRS before he received the SOR, and he made regular payments until he submitted his Officer in Compromise in May 2015. However, he did not demonstrate any sense of urgency regarding the unsatisfied judgment or the medical debts until it became apparent that they were an impediment to obtaining a security clearance.

AG ¶ 20(e) is not fully established. Applicant testified that some of the medical debts were invalid or duplicates of other debts, he did not identify which were invalid or

duplicates. His CBRs reflect that the medical debts alleged in SOR ¶¶ 1.c and 1.g are disputed, but he produced no documentation of the basis for the dispute.

### **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(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Thus, the fact that a delinquent debt has been resolved does not end the inquiry. Applicant is a mature, well-educated, but undisciplined adult. He is financially secure, but his financial history reflects consistent neglect of his financial obligations. His approach to his debts has been reactive rather than proactive. He has demonstrated difficulty adhering to the federal tax laws as well as the rules of the homeowners' association in his former residential community.

Applicant has resolved some of his debts, but his federal income tax debt is not resolved. His history of financial neglect leaves me unconvinced that he will adhere to his federal tax payment plan or avoid further delinquent debts once the pressure of obtaining a clearance is removed.

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 financial delinquencies. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## **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.c: Against Applicant

Subparagraphs 1.d-1.l: For Applicant

Subparagraph 1.m: Against Applicant

Subparagraphs 1.n-1.o: For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge