



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01570

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

03/28/2025

Decision

WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On October 9, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on October 15, 2024, and requested a hearing. This case was assigned to me on January 24, 2025. A hearing was scheduled for February 19, 2025, and was heard on the scheduled date. At the hearing, the Government's case consisted of six exhibits. (GEs 1-6) Applicant relied on seven exhibits and one witness (himself). The transcript (Tr.) was received on February 28 2025.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documentation of any deficiency balance on his mortgage covered by SOR ¶ 1.a, payment credits on his debts covered by SOR ¶¶ 1.d-1.e, filed tax returns for tax years 2020-2023, and/or a letter from his tax accountant. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded two days to respond. Within the permitted time, Applicant supplemented the record with a cover letter from Applicant documenting satisfaction of the allegedly owed deficiency balance covered by SOR ¶ 1.a, a monthly payment plan covering SOR creditor 1.b, and an updated statement covering SOR creditor 1.d. Applicant's post-hearing submissions were admitted as AEs H-J.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated five delinquent consumer debts exceeding \$15,000; (b) accrued federal taxes of \$279 for tax year 2018;; and (c) failed to file his federal and state tax returns for tax years 2020-2023, as required. Allegedly, Applicant's listed delinquent debts and unfiled federal and state tax returns for the years in issue remain unresolved.

In Applicant's response to the SOR, he admitted the allegations covered by SOR ¶¶ 1.a-1.d but denied the allegations covered by SOR ¶¶ 1.e-1.h. Applicant did not provide any explanations or clarifications.

Findings of Fact

Applicant is a 36-year-old civilian engineer of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in March 2013 and has two children from his marriage.(GE 1; Tr. 22) He earned a high school diploma in May 2007 and attended some college classes. (GE 1) Applicant did not report any military service. (GE 1)

Since September 2023, Applicant has worked for his current defense contractor as a facility building manager. (GEs 1 and 3; Tr. 26) Previously, he worked for other

employers in various jobs as an engineer. Following his layoffs in 2014 with accrued debts, Applicant started his own business. (Tr. 21) Between 2017 and 2023, he was self-employed. (GEs 1 and 3; Tr. 22-23) Applicant was granted a security clearance in 2011 and held it for over seven years. (GE 1; Tr. 22) He is presently sponsored for a security clearance by his current employer. (GE 1)

Applicant's finances

Between 2019 and 2023, Applicant accumulated five delinquent consumer debts exceeding \$15,.000 after encountering financial problems associated with the Covid-19 pandemic. (GEs 1-3; Tr. 42-43) He addressed these debts only after being confronted with the delinquencies in his October 2023 personal subject interview (PSI) with an investigator from the Office of Personnel Management (OPM). (GE 3) Applicant's consumer debts are covered in the SOR as follows: SOR ¶¶ 1.a (a delinquent mortgage account of \$10,365); 1.b (a delinquent credit card account for \$937); 1.c (a delinquent credit card account for \$2,587); 1.d (a delinquent credit card account for \$795); and 1.e (a delinquent credit card account for \$1,185). Applicant attributed his debt delinquencies to periods of underemployment following the Covid 19 pandemic and a lack of financial resources. (Tr. 23-24)

Before the hearing, most of Applicant's SOR-listed debts had not been addressed. (GEs 2-6; Tr. 46) During the hearing, he addressed several of his listed creditors and tax enforcement agencies. He furnished a copy of his latest credit report, along with a credited \$276 payment from the Internal Revenue Service (IRS) for tax year 2018. (AEs A-B) Applicant documented his settlement of the debt covered by SOR ¶ 1.e with a compromise payment of \$175. (AE C) And, he provided a documented 2025 refund credit from the IRS in the amount of \$1,465 that was applied to his owed state tax debt for an unidentified tax year. (AE D)

Post-hearing, Applicant documented his satisfaction of the reported loan balance on his 2023 foreclosed home covered by SOR ¶ 1.a. (AE J; Tr. 38-40) He also provided proof of his payment agreements with creditors 1.b (with one payment on an arranged \$70 a month payment plan with the same creditor covering SOR-listed debts 1.b and 1.c) and 1.d (with a \$100 payment to date on an agreement calling for monthly payments of \$100). (AEs H-I; Tr. 43-44) Applicant's remaining consumer debts (i.e., SOR-listed creditors 1.c and 1.e) have not been resolved and remain outstanding.

Records document that neither Applicant nor his retained accountant timely filed his federal and state income tax returns, as required, for tax years 2020 through 2023. (GEs 1-2; Tr. 31-33, 55-57) Applicant attributed his tax filing failures to having insufficient financial resources to satisfy the filing costs for filing his returns. (Tr. 32-34)

Prior to the hearing, Applicant retained a tax relief professional to resolve his unfiled federal and state tax returns. (Tr. 33-34) Although he has apparently since filed his 2023 and 2024 federal and state tax returns, the documented returns bear no date or signature, and, as a result, cannot be credited with timely filing. (AEs E-F) Further, neither Applicant nor his retained tax accountant can be credited with filing his 2020-

2022 federal and state tax returns. Because the costs of filing are so considerable, he could not furnish any time estimates as to when his 2020-2022 federal and state tax returns will be filed. (Tr. 34)

In his May 2024 personal financial statement (PSI), Applicant reported total monthly income of \$8,011, monthly expenses of \$5,219, monthly debt payments of \$380, and a net monthly remainder of \$2,412. (GE 2) Currently, he earns \$97,000 annually and reports a monthly remainder of \$400 after accounting for his monthly expenses. (Tr. 50-53) Asked about his delinquent debts and tax-filing lapses in his PSI, he told the OPM investigator that he is doing his best “to get out of the hole that we were put in.” (GE 2)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” 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. Eligibility for access to classified information may only be granted “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 adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense

decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burdens of Proof

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 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 "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. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[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

Security concerns are raised over Applicant's accumulation of delinquent consumer and tax debts, his failure to timely file his federal and state income tax returns for tax years 2020 through 2023. His accumulated delinquent debts and his multiple tax filing lapses considered together raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly.

Financial concerns

Applicant's accrued delinquent debts and multiple tax-filing lapses warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), "inability to satisfy debts"; 19(c), "a history of not meeting financial obligations"; and 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," apply to Applicant's situation.

Applicant's admitted debts require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). His admitted debts are fully documented and create judgment issues as well over the management of his finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing debt delinquencies and resolving tax-filing failures are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Without any documented evidence of IRS and state approved extensions of the times allotted for his filing his tax returns, or good cause demonstrated for his untimely filing of tax returns for tax years 2020-2023, only minimal application of potentially available mitigating conditions are available to Applicant. MC ¶¶ 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"; and 20(d) "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," have partial application to Applicant's situation.

In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes, consumer, medical, or other debts and accounts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020).

Addressing his delinquent 2018 federal tax debt (SOR ¶ 1.f) and his five consumer debt delinquencies he accumulated between 2018 and 2023, Applicant is entitled to credit for his payoffs of his federal tax debt (SOR ¶ 1.f) and payment settlements with four of the five listed consumer debts (SOR ¶¶ 1.a-1.b and 1.d-1.e) For his still outstanding remaining consumer debt (SOR ¶ 1.c) he provided insufficient evidence of payment satisfaction to credit him with payment of this debt.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of delinquent debts and multiple tax-filing lapses is fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for his work in the defense industry, his efforts are not enough at this time to overcome his repeated failures or inability to address and resolve his still outstanding federal tax returns for tax years 2020 through 2022 Overall trustworthiness, reliability, and good judgment have not been established.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake the necessary reasoned, good-faith efforts to fully mitigate the Government's financial concerns within the foreseeable future. More time is needed for him to establish the requisite levels of stability with his finances to establish his overall eligibility for holding a security clearance. I have carefully applied the law, as set forth in *Department of Navy v.*

Egan, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

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:

Guideline F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.c and 1.g-1.h:	Against Applicant
Subparagraphs 1.a-1.b and 1.d-1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Roger C. Wesley
Administrative Judge