



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



In the matter of:

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ISCR Case No. 24-01107

Applicant for Security Clearance )

**Appearances**

For Government: George Hawkins, Esq., Department Counsel

For Applicant: *Pro se*

06/05/2025

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**Decision**

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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 September 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (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 11, 2024, and requested a hearing. This case was assigned to me on January 24, 2025. A hearing was scheduled for April 7, 2025, and was heard as scheduled. At the hearing, the Government's case consisted of six exhibits. (GEs 1-6, which were received and admitted without objection. Applicant relied on one witness (himself) and six exhibits (AEs A-F), which were admitted without objection. The transcript (Tr.) was received on April 23, 2024.

### **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 his federal and state tax payments. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded one day to respond. Within the time permitted, Applicant supplemented the record with summaries of tax payments made to his states of residence. Applicant's exhibits were received and admitted without objection as AEs G-I.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly is indebted to (a) the federal government for delinquent federal taxes owed for tax years 2013 through 2018 and 2021 in accumulated amounts exceeding \$97,000; (b) State A for delinquent state taxes covered by tax liens for tax years 2016 and 2013, respectively, in amounts exceeding \$8,000; and (c) State B for delinquent state taxes owed in the amount of \$14,851.

In Applicant's response to the SOR, he admitted all but two of the alleged delinquent taxes owed with explanations and clarifications. He claimed his unpaid federal and state tax debts will be handled by a tax hardship center attorney. For the two alleged state tax debts that he denied (SOR ¶¶ 1.h and 1.i), he claimed these tax debts have either been paid or are being paid through a payment plan.

### **Findings of Fact**

Applicant is a 42-year-old civilian employee 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 December 2009 and divorced in December 2012. (GE 1; Tr. 37) He has no children from this marriage. He remarried in December 2020 and has two children from this marriage. (GE 1; Tr. 40) He earned a bachelor's degree in December 2005 and a juris doctor degree in May 2009. (GE 1; Tr. 41) Between January and May

2021, he attended a theological seminary in his state of residence. Applicant did not report any military service.

Since March 2023, Applicant has worked for his current employer as a business analyst. (GE 1; Tr. 43) Previously, he worked for other employers in various job capacities. (GE 1; Tr. 43-46) While he has held a public trust position before, he has never held a security clearance. (GE 1; Tr. 46) Applicant is currently sponsored by his present employer. (GE 1; Tr. 47)

### **Applicant's finances**

Records document that Applicant accumulated delinquent federal tax debts for tax years 2013 through 2018 and 2021 as follows: (a) \$11,904 for tax year 2013; (b) \$11,428 for tax year 2014; (c) \$9,079 for tax year 2015; (d) \$11,228 for tax year 2016; (e) \$11,899 for tax year 2017; (f) \$6,854 for tax year 2018; and (g) \$35,954 for tax year 2021. (GEs 2-6) Total federal taxes owed for tax years 2013 through 2021 exceeded \$97,000. (GEs 2-6; Tr. 61-62)

Applicant attributed his tax delinquencies to excessive exemptions claimed and (lack of attention to a change in his accounting status following his divorce. (GEs 5-6; Tr. 48-50, 64) Despite his continued awareness of his accrued federal and state taxes owed, he still struggled “to get caught up.” (GE 5) And, while he has benefitted from informal financial advice from a tax hardship counselor on the subject of addressing his taxes, he has never availed himself of any documented concentrated financial counseling program. (Tr. 50-51)

Believing that his cryptocurrency investment returns would cover his owed back taxes, Applicant pulled out \$300,000 from his cryptocurrency investment account in 2021 to purchase a home. (GE 5; Tr. 65-66) Concerned about his owed federal taxes, Applicant enlisted financial advice from a tax hardship center in March 2024. (Tr. 62)

Persuaded by a tax hardship center counselor of the urgent need to address his federal tax debts, Applicant refinanced his home in March 2025 (seven months after the issuance of the SOR) and used the credited proceeds from his home refinance and earned federal tax refund to pay off his owed back federal taxes with one lump sum payment of \$121,900. (AEs A-C; Tr. 36, 61-62) Whether his reported federal tax payments covered his cited “large amount of profit from crypto currency” sales are not documented and remain unclear.” (GEs 2 and 5) Equally unclear are his mounted losses from his gambling in crypto currency.

Tax records document Applicant’s accumulation of delinquent state taxes with his respective states of residence. Records document state tax liens entered against Applicant in State A in 2023 in the respective amounts of \$2,952 and \$5,655. (GEs 2-5) Earlier tax payments made to State A for tax years 2017 through 2022 are not in dispute. (GE 5) Records also document delinquent taxes owed by Applicant to State B in a total amount exceeding \$14,851 for tax years 2020 through 2022. (GEs 2-5) Over 50 % of the state tax debts covered by SOR ¶¶ 1.h and 1.i were paid through involuntary garnishment

undertaken by State A's taxing authority, leaving a combined balance owing State A for the two years in issue in the amount of \$4,547. (AE E; Tr. 69-73)

In July 2024 (two months before the issuance of the SOR and 14 months after completing his security clearance application (SCA), Applicant executed an installment agreement with State A, which calls for monthly payments of \$115.00, beginning in August 2024. (AE D; Tr. 34) To date, Applicant has made nine monthly payments of \$115 to State A and is in full compliance with his agreed installment agreement's terms. (AE H) He is in compliance as well with the terms of the installment agreement he executed with State B in January 2025. This installment agreement set monthly payment terms of \$381. (AE I)

Although Applicant is current with all of his other federal and state tax obligations, he remains in debt on the installment agreements he executed with State A and B. (Tr. 36, 85-86) He maintains an average savings account balance of between \$10,000 and \$12,000. (Tr. 82)

## 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. 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 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:

### **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." Compare Exec. Or. 10865 § 7 with the burden requirements of Exec. Or. 12968 (Aug. 2, 1995), § 3.1 for personal appearances cases.

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 (4<sup>th</sup> 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 federal and state taxes over the course of many years. His accrual of delinquent federal and state taxes raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly.

### Financial concerns

Applicant's multiple tax-payment lapses warrant the application of three of the disqualifying conditions (DCs) of the financial consideration guidelines. DC ¶¶ 19(a), "inability to satisfy debts"; (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 federal tax delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6<sup>th</sup> ed. 2006). His admitted tax-payment failures 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 and resolving tax payment delinquencies 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).

Based on Applicant's considerable repayment efforts (mostly post-SOR issuance), Applicant may avail himself of MC ¶ (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." Application of MC ¶¶ 20(c), "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control," and 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise debts," partially apply to Applicant's situation.

The Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating timely 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). Timeliness in filing and satisfying federal and state tax obligations in accordance with established agency requirements are core considerations in assessing an applicant's security clearance eligibility.

Although Applicant has since addressed his back federal and state tax obligations with federal payoffs and compliant state repayment agreements, his repayment efforts come very late and are not accompanied by persuasive explanations of why he waited so long to address his delinquent federal and state tax delinquencies. Considering Applicant's legal training and acknowledged awareness of his tax payment responsibilities at all times relevant, his furnished explanations for his delays in addressing his tax debts are insufficient to satisfy his evidentiary burden.

### **Whole-Person Assessment**

The whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of multiple years of accrued federal and state tax payment deficiencies is compatible with minimum standards for holding a security clearance. Applicant to his credit has made considerable progress in addressing his delinquent federal and state tax delinquencies. His efforts have produced a payoff of his owed federal taxes for the tax years in issue and state installment agreements that satisfy the compliance terms of his executed agreements. However, his payment efforts, while welcomed, come late in the process and fail to meet the timely tax payment requirements

set by the Appeal Board. 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, Applicant has failed to satisfy the timely requirements for meeting an applicant's tax payment responsibilities. Without a record of timely satisfaction of his federal and state tax payment responsibilities, his efforts, while encouraging, are insufficient at this time to facilitate safe predictions that he will be able to satisfy the required good-faith payment efforts in the future to address his federal and state taxes as they come due.

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.a-1.j:** **Against 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