



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



In the matter of:

ISCR Case No. 23-02036

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Applicant for Security Clearance )

**Appearances**

For Government: John C. Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

01/30/2025

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**Decision**

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WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, 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 February 29, 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 July 8, 2024, and requested that his case be resolved on the written record without a hearing. Applicant received the FORM on October 22, 2024, and responded to the FORM (albeit beyond the 30 days allowed) with receipts of payments to the Internal Revenue Service (IRS). Applicant's post-FORM IRS receipts were admitted without objection as Item 7. This case was assigned to me on January 2, 2025. The Government's case consisted of six exhibits and were admitted without objection as Items 1-6.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file his federal income tax returns for tax years 2014, 2017-2018, and 2020-2022, as required; (b) is indebted to the Federal Government for delinquent taxes in excess of \$74,000; and (c) is indebted to his state taxing agency for delinquent taxes in excess of \$22,000 for the tax years in issue.

In Applicant's response to the SOR, he admitted all of the allegations. He claimed he filed all of the listed back federal tax returns, has no federal tax debt for tax year 2014, and is working on a payment plan to resolve his taxes owed for the remaining tax years. He claimed his belief that his state tax return for tax year 2014 was filed. He further claimed that he has paid the remaining balances owed his state of residence for delinquent taxes owed for past tax years. He claimed anxiety as a major reason for not timely filing his federal and state tax returns for the years in issue. He claims to have spent thousands of dollars trying to get out from under his current tax mess. And, he claimed to be an otherwise dependable person who has held a security clearance for many years and complied with security clearance requirements.

### **Findings of Fact**

Applicant is a 56-year-old 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 September 1996 and has two children from this marriage. (Item 2) He attended college classes between May 2003 March 2016 without earning a degree or diploma. Applicant enlisted in his state's Army National Guard in March 2006 and served 11 years in his Guard unit's active reserve. (Item 2) He received an honorable discharge in May 2017. (item 2)

Since June 2019, Applicant has worked for his current employer as a battle staff expert. (Item 2) Previously, he worked for other employers in various jobs. He reported unemployment between July 2018 and June 2019. Defense Information Systems for Security (DISS) records document Applicant's holding a sensitive compartmented information (SCI) security clearance eligibility since January 2014. (Item 5) He is presently sponsored by his current employer.

## **Applicant's finances**

Tax records document that Applicant did not file his federal and state income tax returns, as required, for tax years 2014, 2017-2018, and 2020-2022. While he ultimately late filed both his federal and state tax returns, he did not file them until years later without any documented extensions. (Items 1-3) Applicant attributed his tax-filing lapses to financial hardship and personal anguish associated with his early departure from his public employer over a discipline-related three-to-four-week work suspension resulting from a sexually inappropriate public comment he made at his workstation. (Items 1-3)

Federal tax records further document that Applicant is indebted to the Federal Government for delinquent taxes in excess of \$74,000 for the covered tax years in issue. (Items 3-4) State tax records document Applicant's state tax delinquencies totaling \$14,676 for tax years 2014, 2016-2019, for which he did not address until February 2024 (just prior to his SOR response). See Items 1 (attaching state tax payments totaling \$12,700) and Items 3-4. Check printouts furnished by Applicant in his post-FORM response document his payments to the IRS totaling \$6,733 (Item 7) However, he provided no evidence of additional tax payments or installment payment plans with the IRS, or timetable for making additional payments towards the satisfaction of his remaining taxes owed the IRS (i.e., in excess of \$68,000) for the tax years covered by the SOR.

Financial resources available to Applicant to pay off his remaining owed federal taxes are not insubstantial. Vehicle registration records from his state of residence report multiple vehicles registered to him. (Item 6) Considered together, they represent substantial liquid property interests that he could ostensibly access to accelerate his payoffs of his owed federal taxes. Documentation of his liquidating any of his registered vehicles to accelerate his payment progress with the IRS is lacking in the record.

## **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 (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 failure (a) to timely file his federal and state tax returns for tax years 2014, 2017-2018, and 2020-2022. as required, and (b) his accumulation of delinquent federal and state taxes owed the IRS and his state’s taxing agency.

## Financial concerns

Applicant’s multiple federal and state tax-filing lapses for tax years 2014, 2017-2018, and 2020-2022, and owed taxes for the tax years in issue, 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.”

Applicant's admitted tax-filing failures and delinquent accumulations federal and state taxes owed 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-filing failures and tax debt delinquencies are fully documented and create judgment issues 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 tax filings and tax debts.

Historically, the timing of addressing and resolving of an applicant's tax-filing failures and accumulated tax debt delinquencies are critical to an assessment of the 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. 14-00221 at 2-5 (App. Bd. June 29, 2016); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); and ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 5, 2002).

Without documented evidence of Applicant's timely resolving his federal and state tax-filing failures and his individual federal tax-debt delinquencies with payoffs and payment plans, none of the potentially available mitigating conditions are available to him. In the past, the Appeal Board has imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes 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).

While Applicant has been able to address and resolve his state tax delinquencies, he remains in debt for over \$68,000 on back taxes owed to the IRS for the tax years in issue. Neither his late-filing federal and state tax returns for the tax years covered by the SOR nor IRS payment progress to date are sufficient to mitigate the Government's financial concerns.

Applicant's late tax filings and expressed commitments to take care of his remaining tax debt delinquency issues in the future, while encouraging, lack the needed documentation to corroborate his assurances and atone for his past tax-filing and payment lapses. Late tax filings, while welcomed, do not meet Appeal Board timeliness requirements. And, promises to resolve his still outstanding federal tax debts are not viable substitutes for a track record of timely paying federal taxes owed and otherwise

acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019).

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of tax filing failures and accumulated delinquent federal and state taxes are fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for his work in the defense industry and his payment of his owed state taxes, his efforts are not enough at this time to overcome his repeated failures or inability to timely file his federal and state income tax returns and address his accrued federal tax debts in a timely way. 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 documented good-faith efforts to 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.a-1.d:	Against Applicant
Subparagraph 1.e:	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.

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Roger C. Wesley  
Administrative Judge