



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



In the matter of:)
)
) ISCR Case No. 23-02036
)
Applicant for Security Clearance)

Appearances

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

04/10/2025

Remand Decision

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). The Government's case consisted of six exhibits and were admitted without objection as Items 1-6.

Applicant's post-FORM IRS receipts with a cover letter of December 17, 2024, were admitted without objection as Items 7-9. His post-FORM payments consisted of the following: two IRS receipts (both dated November 21, 2024) totaling \$8,108 and \$11,891, respectively, and one IRS receipt for \$3,366. (Items 7-9) Applicant's post-FORM submissions also included a \$9,000 payment receipt from the IRS, a November 21, 2024, and an attached character reference from a former ranking Air National Guard and supervisor of Applicant in his Guard unit and longtime friend. (Items 10-12) Applicant's post-FORM submissions were received without objection. This case was assigned to me on January 2, 2025.

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 also claimed that he has paid the remaining balances owed to his state of residence for delinquent taxes owed for past tax years.

Applicant claimed anxiety as a major reason for not timely filing his federal and state tax returns for the years in issue. He claimed 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. Applicant attached copies of recent payments made to his state taxing agency totaling \$15,200.

In its remand decision, the Appeal Board ordered the reopening of the record to address cited evidence not considered and inconsistent formal findings covering SOR ¶¶ 1.d and 1.e. Formal findings addressing the Board's cited errors follow.

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 and 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. (Items 2 and 12) 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 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)

In a post-FORM submission, Applicant elaborated on how he allowed his federal and state tax filings to slip following his last military deployment. (Item 11) Struggling to find the means to resolve his tax situation, he claimed to be closer to resolving his tax issues with recent tax filings and payments. (Item 11)

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) Check printouts furnished by Applicant in his post-FORM response document his payments to the IRS totaling \$32,365 in November and December 2024. (Items 7-10)

Applicant provided no evidence, however, of additional tax payments or installment payment plans with the IRS, or a timetable for making additional payments towards the satisfaction of his remaining taxes owed the Service (i.e., in excess of \$42,000, with interest continuing to accrue) for the tax years covered by the SOR. With credit extended for his latest payments to the IRS, Applicant remains indebted to the IRS for federal tax debts exceeding \$42,000 with no IRS-approved installment agreement or other developed payment plan in place for satisfying his remaining federal tax balance.

State tax records document Applicant's state tax delinquencies totaling \$7,559 for tax years 2014 through 2019 (which he did not address until 2022 or 2023) and state tax delinquencies totaling \$14,676 for tax years 2020 through 2022, which he did not address until February 2024 (just prior to his SOR response). See Item 1 (attaching state tax payments totaling \$12,700. Documented in his SOR response are his state tax payments of \$6,200 (covering tax year 2020), \$6,500 (covering tax year 2021, and \$2,500 (covering tax year 2022) that reflect his satisfaction of delinquent state taxes (albeit untimely) owed for tax years 2020 through 2022. (Item 1)

State tax payments approved by Applicant's retained tax accountant covering owed tax payments totaling \$7,559 for tax years 2014 and 2016 through 2019 were included in Applicant's attachments to his interrogatory responses. (Item 3) While not explicitly documented with payment receipts for these tax years, his accountant's approval letter is sufficient to credit Applicant with payments owing for these tax years.

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.

Endorsements

Applicant is well-regarded by his former commanding officer in the Air National Guard who enjoys a developed close personal friendship with Applicant. (Item 12) He credited Applicant with responsible managing of his unit's funding streams and characterized his former subordinate and friend as an honest, forthright, trustworthy, great American "who has served his country for over 30 years in and out of uniform." (Item 12) Without any recited knowledge of Applicant's raised tax issues, his former commanding officer closed with a full recommendation of a security clearance approval for Applicant. (Item 12)

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 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 accumulations of delinquent 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 (6th 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).

While Applicant has been able to address and resolve his state tax delinquencies for tax years 2014 through 2022, he remains in debt for over \$42,000 in 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 his IRS payment progress to date are sufficient to mitigate the Government's financial concerns.

Without documented evidence of Applicant's timely resolving of his federal and state tax-filing failures and his individual federal tax-debt delinquencies with payoffs and IRS-approved payment plans, only limited mitigation credit can be extended to Applicant. MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," warrants partial application to Applicant's situation.

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).

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 and state 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. To be sure, Applicant is entitled to credit for his military service, his work in the defense industry, and his payoffs of his owed state taxes while making noted progress in paying down his owed federal taxes.

Applicant's efforts to date are not sufficiently substantial at this time, however, to overcome his repeated failures or inability to timely file his federal and state income tax returns and fully 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.c:
Subparagraphs 1.d-1.e:

Against Applicant
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