



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



Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: *Pro Se*

05/09/2025

Decision

HALE, Charles C., 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 January 23, 2023. On July 10, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on November 3, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 11, 2025, and the case was assigned to me on February 14, 2025. On March 24, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 24, 2025. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and the record was left opened until May 1, 2025, for him to offer Applicant Exhibits (AE). He submitted two documents AE A, a tax form the IRS requested he fill out and AE B, a

character letter from the mother of one of his children, which were admitted without objection. DOHA received the transcript (Tr.) on May 5, 2025.

Findings of Fact

In Applicant's Answer he denied he failed to file and pay his Federal returns for the tax years 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022 (SOR ¶ 1.a); he admitted he failed to file and pay his State 1 returns for the tax years 2020, 2021, and 2022 (SOR ¶ 1.b); and he denied he failed to file and pay his State 2 returns for the tax years 2015, 2016, 2017, 2018, 2019, and 2020 (SOR ¶ 1.c). He denied the two delinquent child support obligations, SOR ¶¶ 1.d and 1.e, on the basis he was in making payments as required by the jurisdiction, which included addressing any arrears. His admissions are accepted as findings of fact.

Applicant is a 43-year-old electrical contractor. He has worked for his sponsor since 2023. His SCA reflects he has been employed continuously since 2011. He has never held a security clearance. He is a high school graduate. He is single and has two children ages 12 and 18. (GE 1; Tr. 10-20.)

Applicant failed to timely file income tax returns for at least tax years 2015 through 2022, as required in three jurisdictions (SOR ¶¶ 1.a - 1.c). He testified he believed he actually stopped filing his taxes prior to the years alleged. He was in financial difficulties due to the recession in 2008. At the time he focused on trying to maintain his mortgage but lost the house to foreclosure. He also cited being out of work for a period due to the COVID 19 pandemic. In his August 2023 security clearance interview, he told the investigator he planned to file his unfiled taxes by the end of 2023. In the interview, he cited procrastination for not filing his taxes. He testified that after he received the Government interrogatories in early January 2024, he filed all of his unfiled taxes on January 31, 2024, and February 2, 2024, including years not alleged. He estimates he owes over \$100,000 in unpaid Federal taxes. He testified he is working with an IRS representative to set up a payment plan. As of the hearing he is still working with the IRS to establish a formal tax payment plan. He has worked with the IRS representative by phone and has received a packet with the instructions he needed to resolve his tax situation. He explained that he denied his failure to file his taxes in his Answer on the basis that he filed the returns. (GE 7; AE A; Tr. 13, 27-28 32-41, 44, 54-56.)

Applicant has not filed or paid the State taxes alleged in SOR ¶¶ 1.b and 1.c. He testified he was resolving his Federal delinquencies first. He has filed his State 1 return on time for the past two years. Any refund from his State 1 filing has been taken by the Federal government. (Tr. 42-44.)

In response to Government interrogatories, Applicant provided an explanation for his failure to file his Federal and state/local tax returns.

I fell into financial problems during the 2008 recession. I had to take a pay cut, so I stopped paying [Federal] tax[es] to pay [my] mortgage, but I still

lost the house. And I planned to pay taxes when I earned more money. (GE 2.)

Applicant owes \$8,668 as alleged in SOR 1.d and \$3,756 as alleged in SOR 1.e. He acknowledged the debts in his security clearance interview. He denied them in his Answer on the basis he was paying his child support, which included an extra \$60 amount each month to cover his arrears. He testified, consistent with his security clearance interview, that he pays \$100 a week for each child plus an additional amount for his arrears. His support obligation for his 18-year-old child continues until age 21. At the time of the interview, he could not recall why the accounts became delinquent. A December 2023 credit report shows his youngest child's account as being opened in April 2021 and coming past due in May 2022. His oldest child's account was opened in May 2009 and coming past due in June 2022. He blamed being out of work due to COVID for becoming delinquent in his child support obligations. He testified both of his children have lived with him, and his oldest child is currently living with him. In his response to Government interrogatories, he stated "both have live[d] with me for the past three years." He expects his youngest child to be living with him in the near future. (GE 2; GE 5; GE 7; Tr. 56-66.)

Applicant testified he has between \$8,000 to \$10,000 in his savings account. His unsigned IRS Form 433-A reflected this amount. Based on what he reported, the net difference between his gross monthly income and actual expenses was \$120. He estimated he has about \$50,000 in his retirement account. He is working two jobs. His oldest child lives with him and his son's mother is currently living with him as well. (Tr. 68-69.) (GE 2; GE 5; GE 7; AE A; Tr. 56-66.)

The mother of Applicant's oldest child attested to his character. She described him as a devoted father and a responsible individual. She added that he was respectful, and always striving to make the best decisions for his family. She stated:

We are currently working together on getting the existing child support order modified or removed, as our living situation and family dynamics have changed. We plan to address this officially when we have the opportunity. (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure 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 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 or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: (a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; and (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." The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 that are potentially applicable are as follows:

- (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; and

(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;

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

AG ¶ 20(a) and 20(b) are not established for SOR ¶¶ 1.a through 1.c. Applicant testified he filed his delinquent taxes but failed to document his actions. He filed his outstanding Federal income tax returns after receiving the Government's January 2024 interrogatories. He has unpaid Federal taxes of over \$100,000. He told the investigator during his security clearance interview that he would resolve his tax issues by the end of 2023. His failure to file his taxes was not infrequent, and he filed his Federal tax returns only after his security clearance was in jeopardy, which casts doubt on his current reliability, trustworthiness, and good judgment.

Applicant did not provide direct evidence to support his testimony that he is current on his child support payments, but the character letter provided was consistent with that testimony. AG ¶ 20(a) and 20(b) are established for SOR ¶¶ 1.d and 1.e.

AG ¶ 20(g) is not established. Applicant failed to timely file his Federal and state income tax returns for tax years 2015 through 2022. Failure to timely file Federal and state income tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. See ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). He filed his outstanding Federal income tax returns after receiving the Government's January 2024 interrogatories. The Appeal Board has noted that a security clearance adjudication is not directed at collecting debts. See, e.g.,

ISCR Case No. 07-08049 at 5 (App. Bd. July 22, 2008). Neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Applicant's explanation that he prioritized other financial matters over filing his taxes is not a legal justification. His procrastination in ensuring he was compliant with tax laws demonstrates poor judgment and lack of reliability required to be granted access to classified information. See ISCR Case No. 17-03049 (App. Bd. May 15, 2018) (citing ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016)).

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

Under all the circumstances, Applicant has not mitigated his failure to timely file his Federal and state income tax returns for the tax years in question.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept.” I found the character letter persuasive and consistent with his testimony. My comments under Guideline F are incorporated in my whole-person analysis.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishment of a track record of timely filing his tax returns he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a - 1.c: Against Applicant
Subparagraphs 1.d - 1.e: For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant’s national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge