



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



In the matter of: )  
 )  
 ) ISCR Case No. 24-01236  
 )  
Applicant for Security Clearance )

## **Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

06/02/2025

## 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 11, 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 November 30, 2024, and requested that his case be resolved on the written record without a hearing. Applicant received the File of Relevant Material (FORM) on February 5, 2025, and elected not to respond to the FORM. This case was assigned to me on March 3, 2025. The Government's case consisted of eight submissions that were admitted without objection as Items 1 through 8.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file, as required, federal income tax returns for at least tax years 2007 through 2020, and tax years 2022 through 2023; (b) failed, as required, to file his state income tax returns for at least tax years 2007 through 2019, and tax years 2017 through 2019, with his federal tax returns for tax years 2007 through 2019 and his state tax returns for tax year 2008 and tax years 2014 through 2019 still unfiled; (c) is indebted to the Federal Government for unpaid taxes totaling at least \$6,000 for tax years 2022 and 2023; and (d) is indebted to a private creditor on a delinquent account totaling \$26,847 Allegedly, Applicant's delinquent federal tax and consumer debts remain unresolved and unsatisfied.

In Applicant's response to the SOR, he admitted most of the allegations with explanations and clarifications. Without responding to allegations of non-filing federal income tax returns for tax years 2022 and 2023, he claimed an intention to work with the Internal Revenue Service (IRS) and state taxing authority to identify and pay any owed federal and state taxes. And he claimed his intention to reach out to his former business partner to ensure that the alleged consumer debt was not previously discharged in bankruptcy. He provided no documented attachments.

### **Findings of Fact**

Applicant is a 45-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 October 2011 and divorced in March 2018. (Item 4) He has no children from this marriage. He has co-habited with another person January 2014. (Item 4) He earned a high school diploma in June 1998. He reported no military service. (Item 4) Since August 2022, Applicant has been employed by his current employer as a cable station technician. (Item 4) Previously, he worked for other employers in various jobs and reported unemployment between 2019 and 2022. He is sponsored for a security clearance by his current employer but has never held a security clearance or public trust position.

### **Applicant's Finances**

While experiencing periods of unemployment between 2019 and 2022, Applicant accumulated both delinquent federal taxes and a consumer debt delinquency during this

time. (Items 5 and 8) More specifically, between 2022 and 2023, Applicant accumulated delinquent federal taxes (still unpaid) exceeding \$6,000 and a delinquent consumer truck-financing debt of \$26,847. (Items 5-8) All of these debts remain unpaid and delinquent.

Additionally, Applicant is of record in failing to file his (a) federal income tax returns for tax years 2007 through 2020, and tax years 2022 and 2023, as required and (b) his state income tax returns for tax years 2007 through 2019, as required, most of which remain unfiled. Documented delinquent federal income taxes owed for tax years 2022 and 2023, approximating \$6,000 for these tax years, remain unpaid and unresolved. (Items 5-6)

Besides his owed federal taxes, Applicant is indebted to SOR creditor 1.d in the amount of \$26,847 on a delinquent truck-financing debt. (Items 3-7) This debt arose out of a failed payoff of a collateralized truck loan co-signed for by Applicant and his business partner in 2017. (Item 7) After the business was dissolved, his partner reportedly filed for bankruptcy and could no longer contribute his portion of the monthly financing charges. By 2022, Applicant's truck loan had reached major delinquency status, which remains unchanged. (Item 7)

To date, Applicant has made no documented payment progress in addressing his tax and consumer debt delinquencies and tax filing lapses. Any installment agreements he may have arranged with the IRS and his consumer creditor are not documented and cannot be presumed without corroboration. In a personal subject interview (PSI), convened in January 2023, Applicant told the assigned investigator from the Office of Personnel Management (OPM) that he filed his federal and state tax returns in some years, and not in others. (Item 6) While he did not know what monies he owed the IRS he told the agent that he would contact the Service and pay any amounts determined the Service to be owing. (Item 6) To date, he has taken no documented actions to address either his delinquent federal and state tax returns or his delinquent consumer account.

In his 2023 (PSI) Applicant reported monthly net income of \$5,000, monthly expenses of \$2,300, and a net monthly remainder of \$2,900. (Item 5) His financial statement has not been revised or updated. (Items 5 and 6)

## 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." *Egan*. 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 AGs include conditions that could raise a security concern and may be disqualifying (disqualifying conditions) 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, Feb. 20, 1960, § 7. See, for comparison, Exec. Or. 12968 (Aug. 2, 1995), § 3.1 (covering personal appearances).

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 federal tax debts exceeding \$6,000, a delinquent consumer debt exceeding \$26,000, and timely federal and state tax filing lapses that raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly. These concerns are addressed below.

## **Financial concerns**

Applicant's accumulated delinquent debts warrant the application of four of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), "inability to satisfy debts"; 19(b), "unwillingness to satisfy debts regardless of the ability to do so"; 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. His admitted debt delinquencies and federal filing lapses (limited to tax years 2007 through 2019) 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). Applicant's admitted debt delinquencies are fully documented and raise judgment issues over the management of her 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 of an applicant's debt delinquencies and tax filing lapses (SORs ¶¶ 1.a-1.d) 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 documented evidence of Applicant's favorably resolving his current debt delinquencies and timely tax filing failures, or alternatively, demonstrated good cause for why these debts and timely tax filing failures have not been timely resolved to date, potentially available mitigating conditions are limited. Only mitigating condition (MC) 19(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," has limited application based on his reported periodic unemployment without more information on the current status of his finances.

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 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). Afforded opportunities to do so, Applicant has provided insufficient information on the status of his debts and federal and state tax filings. Applicant's expressed commitments to address his debts and stabilize his finances, while

welcomed, without documented validation, represent no more than promises to resolve his still outstanding consumer and tax debts and are not viable substitutes for a track record of paying debts in a timely manner 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 accumulated delinquent debts (both consumer and taxes) and tax-filing lapses are 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 his debts and file his federal and state income tax returns 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, conclusions are warranted that Applicant has not provided sufficient evidence of good-faith efforts to resolve his debts and tax-filing lapses to mitigate the Government's financial concerns. More time and effort are 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
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### **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