



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



## **Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2025

## 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 April 25, 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 (undated) and requested a hearing. This case was assigned to me on December 5, 2024. A hearing was scheduled for February 6, 2025, and was heard on the scheduled date. At the hearing, the Government's case consisted of six exhibits. (GEs 1-6) Applicant relied on no exhibits and one witness (himself). The transcript (Tr.) was received on February 19, 2025.

### **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 any deficiency balance on his car loan debt covered by SOR ¶ 1.a, payment credits on his debts covered by SOR ¶¶ 1.d-1.e, and filed tax returns for tax years 2016 through 2022. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded two days to respond. Within the permitted time, Applicant supplemented the record with a cover letter documenting satisfaction of the allegedly owed deficiency balance covered by SOR ¶ 1.a, a monthly payment plan covering SOR creditor ¶ 1.b, and an updated statement covering SOR creditor ¶ 1.d. Applicant's post-hearing submissions were admitted as AEs A-K.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accumulated five delinquent consumer debts exceeding \$5,000; (b) accrued child support arrearages exceeding \$23,000; (c) failed to pay federal taxes of \$279 for tax year 2018; and (c) failed to file his federal and state tax returns for tax years 2016-2020 and 2023, as required; and (d) is indebted to the federal government for delinquent taxes owed in the amount of \$1,108 for tax year 2015. Allegedly, Applicant's listed delinquent debts, child support arrearages, and unfiled federal and state tax returns for the years in issue remain unresolved.

In Applicant's response to the SOR, he admitted the allegations covered by SOR ¶¶ 1.a-1.f but denied the allegations covered by SOR ¶¶ 1.g-1.i. Applicant did not provide any explanations or clarifications.

### **Findings of Fact**

Applicant is a 41-year-old civilian engineer 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 never married and has three children from previous relationships (ages 21, 16, and 7). (GE 1; Tr. 24) He currently lives with his mother in his childhood home. (Tr. 24) He earned a high school diploma in June 2001 and attended some college classes. (GE 1; Tr. 26) Applicant did not report any military service. (GE 1; Tr. 24)

Currently, Applicant is a contract employee who works irregular jobs and shifts. (GEs 1 and 3; Tr. 25) Previously, he worked for other employers in various technician jobs. He reported brief unemployment in 2022. (GE 1) He is presently sponsored for a security clearance by his current employer but has never held a security clearance. (GE 1; Tr. 24-25)

### **Applicant's finances**

Between 2020 and 2023, Applicant accumulated five delinquent consumer debts exceeding \$5,000 after encountering financial problems associated with his limited cash resources to address his creditors. Despite promises made to the OPM investigator from the Office of Personnel Management (OPM), who interviewed him in October 2023, he has no noted progress to date in addressing his delinquent accounts. Applicant's consumer debts are covered in the SOR as follows: SOR ¶¶ 1.a (a delinquent auto loan debt for \$855); 1.b (a delinquent credit card account for \$725); 1.c (a delinquent utility account for \$197); 1.d (a delinquent credit card account for \$2,240); and 1.e (a delinquent credit card account for \$1,468. (GEs; 4-6) Applicant attributed his debt delinquencies to a lack of consistent work. (Tr. 27-32) To date, he has made no documented efforts to address most of these debts. Only the debt arising from the wreckage of his vehicle (paid for by his insurance) has been resolved. (Tr. 27-28)

Besides his accumulation of delinquent consumer accounts, Applicant is currently indebted to his state's child and family services agency for child support arrearages approximating \$23,000. (GEs 1-2 and 6; Tr. 31) He claimed without documentation of his bi-weekly pay deductions to cover the arrearages. (Tr. 31)

Federal tax transcripts covering his federal tax filings were documented in Applicant's post-hearing submissions. (AEs A-K) They reflect Applicant's late federal tax return filings for tax years 2015 and 2019 through 2022 (AEs A-D, F, and J), as well as a late-filed state tax return for tax year 2021. (AE K) Records further document that neither Applicant nor any retained tax accountant filing on his behalf have filed Applicant's federal and state income tax returns for tax years 2016 through 2018, as required. (AEs E and G) Applicant furnished IRS transcripts documenting his filed federal and state returns for tax year 2023. (AEs )

In his submitted October May 2023 personal financial statement, Applicant reported total monthly income of \$3,731, monthly expenses of \$3,560, and a net monthly remainder of \$171. (GE 2; Tr. 43) He retains no source of income to draw upon when he is not working. (Tr. 43-44) Financial counseling has never been pursued by Applicant.. (Tr. 44)

### **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 accumulation of delinquent debts, his child support arrearages, and his failure to timely file his federal and state income tax returns for tax years 2016 through 2021 and 2022 (federal) and 2015 through 2022 (state). His accumulated delinquent debts, his child support arrearages, and his multiple tax filing lapses, considered together, raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly.

### **Financial concerns**

Applicant's accrued delinquent debts and multiple tax-filing lapses 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," apply to Applicant's situation. Applicant's admitted debts 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 debts 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 debt delinquencies and resolving tax-filing failures 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 any documented evidence of IRS and state approved extensions of the times allotted for his filing his tax returns, or good cause demonstrated for his untimely filing of his tax returns for the tax years in issue, none of the potentially available mitigating conditions are available to Applicant. In the past, 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, 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).

Addressing his delinquent consumer debts (SOR ¶¶ 1.a-1.e), Applicant is entitled to payment credit for only one (SOR ¶ 1.a) of the five listed consumer debts. His credible claims of his insurance coverage of the \$855 auto loan deficiency on the car he

wrecked is accepted for demonstrated good cause. Credit is also warranted for his satisfaction of the \$1,108 tax debt owed to the federal government for tax year 2015. For his remaining consumer debts, his child support arrearage, and his multiple tax-filing lapses, he provided insufficient evidence of payment and filing satisfaction to credit him with resolution of these financial issues.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of delinquent debts, child support arrearages, and multiple tax-filing lapses is 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 insufficient to overcome his repeated failures or inability to address and resolve his still outstanding delinquent consumer accounts, his child support arrearages, and his federal and state tax-filing requirements. 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 the necessary reasoned, 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 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.b-1.h:	Against Applicant
Subparagraphs 1.a and 1.i:	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