



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



In the matter of: )  
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----- ) ISCR Case No. 21-02035  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2022

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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 considerations concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On October 7, 2021, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD 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); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (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 in October 2021, and elected to have his case decided on the basis of the written record, in lieu of a hearing. The case was assigned to me on December 22, 2021. Applicant received the File of Relevant Material (FORM) on January 18, 2022, and interposed no objections to the materials in the FORM. Afforded an opportunity to supplement the FORM, Applicant timely supplemented the FORM with documentation of his paying off his student loans (SOR ¶ 1.e, Item 9). Applicant's submission is admitted without objection as Item 9.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file his federal income tax returns for tax years 2017-2018, as required; (b) accrued delinquent federal taxes for tax years 2014, 2019, and 2020 in the reported amount of \$1,868; and (c) accumulated delinquent student and consumer debts (six in all) exceeding \$13,000. Allegedly, these debts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted all of the alleged debts with explanations. He claimed he filed his 2017-2018 federal tax returns in October 2021 and entered into an installment agreement with the Internal Revenue Service (IRS) in October 2021 to satisfy his back taxes owed for tax years 2014, 2019, and 2020. Applicant added enclosures covering his installment agreement and documentation of \$50 monthly payments to the IRS in October 2021.

Applicant filed a supplemental response in November 2021. (Item 3) In his supplemental response, Applicant confirmed his filing of his Form 1040 federal income tax returns for tax years 2017 and 2018 around October 2021 and was waiting to hear back from the IRS. He claimed he currently has an installment agreement with the IRS and is paying \$500 a month. He also claimed he paid the SOR ¶ 1.d debt in full. And, he claimed he paid the SOR ¶ 1.f utility debt in full. Applicant attached supporting documentation. (Item 3)

### **Findings of Fact**

Applicant is a 42-year-old aircraft mechanic for a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in July 1999 and divorced in March 2006. (Item 4) He has one child from this marriage. He remarried in June 2006 and has one child from this marriage. (Item 4) Applicant earned an associate's degree in April 2010. (Item 4) He enlisted in the Air Force in July 2000 and served 15 years of active duty before receiving an honorable discharge in July 2015. (item 4)

Since August 2020, Applicant has been employed by his current employer as an aircraft mechanic. (item 4) Previously, he worked for other employers in various types of

mechanic positions. He held a security clearance while in the Air Force, but has not held one since his AF discharge in July 2015. (Item 4)

### **Applicant's finances**

Applicant failed to timely file his federal income tax returns for tax years 2017 and 2018. (Items 3-6) Whether he ever filed his federal tax returns for those years is unclear. His IRS tax transcripts covering his 2017 and 2018 tax years confirmed that, as of April 28, 2021, Applicant had not filed his tax returns for tax years 2017-2018. (Item 6) His claims in his response of filing his tax returns for these years in October 2021 are not corroborated and cannot be accepted at face value without verification.

Applicant became indebted to the IRS for delinquent taxes for tax years 2014, 2019, and 2020. (Items 1-6) Summaries furnished from the IRS document his taxes owed for these years as follows: for 2014 (\$909), for 2019 (\$589), and for 2020 (\$365). (item 3) On October 2021, 2021, Applicant reached out to the IRS to reinstate his prior installment agreement. (Item 2) Under the terms of his new installment agreement approved by the IRS, Applicant committed to paying \$50 a month to the IRS on his agreed \$1,868 balance owing. (Items 2-3) Reportedly, Applicant is in compliance with his payment terms.

Besides his tax debts, Applicant accumulated delinquent student loan and consumer debts exceeding \$13,000. (Items 5-8) His listed delinquent student loan account approximates \$10,529. (Items 5-8) He is also indebted to three consumer creditors for moneys owed in excess of \$3,000. (Items 5-8)

Since September 2021, Applicant has been working to pay off his delinquent accounts. In February 2022, he paid off his student loan indebtedness with a lump sum payment of \$9,480. (Item 9) But while he is was able to resolve two of his remaining three consumer debts (i.e., SOR ¶¶ 1.d and 1.f) with pay-offs, he has not addressed his remaining consumer debt (SOR ¶ 1.c) This account remains unresolved at this time. Applicant reported joint monthly income of \$7,004. (Item 6) He reported monthly expenses of \$6,561 and a net monthly remainder of \$39. (Item 6)

Because there is a lack of documented information from Applicant in the record to assess his income tax filing status for tax years 2017 and 2018, and the remaining delinquent debt (covered by SOR ¶1.c), no favorable inferences can be drawn as to whether he will be able to resolve his remaining financial issues in the foreseeable future. Based on the absence of sufficient evidence of tax filing and payment history, Applicant's prospects for addressing his delinquent tax filing and payment issues are uncertain at best.

### **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. The AG 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 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 personal 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage. 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 failures to file his federal income tax returns for tax years 2017-2018 and satisfy the federal taxes owed the IRS for tax periods 2014, 2017, and 2019. Additional security concerns are raised over applicant's accumulation of delinquent student loan and consumer debts. On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply to Applicant's situation: DC ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's admitted tax-filing lapses and debt delinquencies 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 debt delinquencies are fully documented and create judgment issues as well over the management of his finances. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004)

Financial stability in a person cleared to protect classified and sensitive information is required to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified and sensitive information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion to classified information or to holding sensitive position, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing and resolving of tax-filing failures and debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability and good judgment in following rules, regulations, and guidelines necessary for those seeking access to classified and sensitive 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). Applicant's history of financial difficulties associated with his still unresolved delinquent debts (SOR ¶ 1.c) raise considerable concerns over his ability to manage his finances in a responsible and reliable way.

Based on the information Applicant furnished, extenuating circumstances played no material role in Applicant's accumulation of delinquent accounts. Gainfully employed for many years, he provided little documentation as to how he budgeted and addressed his tax-filing responsibilities and debt management before receiving the SOR in 2021. Why he did not begin to address his delinquent accounts in a material way with the resources available to him prior to receiving the SOR response is unclear. With so little financial information to work with relative to the circumstances prompting him to fall behind with his tax-filing obligations and taking care of his student loans and other accounts with the income resources available to him, no meaningful extenuation or mitigation credit can be assigned to him at this time.

To date, Applicant has neither filed his federal income taxes for tax years 2017-2018, nor resolved his remaining delinquent consumer debt. Promises (express or implied) by an applicant to pay or otherwise resolve delinquent debts in the future

without well-developed repayment plans do not meet Appeal Board requirements for establishing for establishing a track record for 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); ISCR Case No. 09-05252 at 3 (App. Bd. Dec. 3, 2010). Based on Applicant's failure to date to establish a meaningful track record of timely filing of his federal income tax returns and addressing his delinquent accounts in a responsible way, it is too soon to make safe predictive assessments as to whether Applicant can restore his finances to stable levels consistent with minimum requirements for holding a security clearance. More time and initiatives are required to enable Applicant to meet his evidentiary and persuasive burdens of proof.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether Applicant's failure to timely file his federal income tax returns for tax years 2017-2018 and adequately address his delinquent debts are otherwise compatible with DoD requirements for holding a security clearance. While Applicant is entitled to credit for his contributions to the defense industry, his employment contributions are not enough at this time to overcome his tax-filing lapses and his lack of a meaningful track record for dealing with them and maintaining responsible control of his finances.

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 that 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.a, and 1.c:	Against Applicant
Subparagraphs 1.b and 1.d-1.f:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Roger C. Wesley  
Administrative Judge