



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-03549  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

08/18/2022

**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 March 13, 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 guidelines 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); 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 in or about July 2021 based on his email responses, and requested a hearing. This case was assigned to me on January 6, 2022. A hearing was scheduled for April 20, 2022, and was heard on the scheduled date. At the hearing, the Government's case consisted of three exhibits. (GEs 1-3) Applicant relied on five exhibits. (AEs A-E) and one witness (himself). The transcript (Tr.) was received on April 28, 2022.

### **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 his filing a non-state district tax return for tax year 2015 in June 2021. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded seven days to respond. Applicant did not supplement the record.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly failed to file his federal and state tax returns, as required, for tax years 2012 through 2015. Allegedly, these tax returns remain unfiled.

In Applicant's response to the SOR, he admitted all of the alleged failure-to-file allegations with explanations. He claimed he filed these federal, state, and local district tax returns in June 2021 and was waiting for a response from the Internal Revenue Service (IRS).

### **Findings of Fact**

Applicant is a 35-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 has never been married and has no children. (GEs-2; Tr. 27) He earned a bachelor's degree in May 2008 and completed additional post-graduate classes between May 2008 and June 2012. (GEs 1-2; Tr. 27) Applicant did not report any military service and has never held a security clearance. (GEs 1-2)

Since October 2015, Applicant has worked for his current defense contractor as an engineer. (GE 1; Tr. 28) Because the company he listed in his security clearance application has a different name, and no longer sponsored him after March 3, 2022, initial confusion arose over the status of his sponsorship. (HE 1) Current DOHA tracking entries confirm his sponsorship by his current employer under a different name, as of March 9, 2022. (H1) Whether the new sponsorship reflects a name change or a corporate purchase of his old company is unclear.

Previously, Applicant was self-employed as a freelance data analyst (August 2015-October 2015) for a start-up company and provided tutorial services between June 2011 and August 2014. (GEs 1-2) Applicant has never held a security clearance.

### **Applicant's finances**

Records document that Applicant did not timely file his federal, state, and local district tax returns, as required, for tax years 2012 through 2015. (GEs 1-3) He is credited with filing his federal tax returns for tax years 2012-2015 in May 2021. (AE B; Tr. 25-26) Applicant is also credited with filing his state tax returns for tax years 2012-2014 in May 2021. (AE E; Tr. 30-31) According to a notice to Applicant, in July 2021, the local district's office of tax and revenue processed his filed 2015 income tax return in 2021 and denied his refund claim because his refund claim exceeded the maximum time limit. (AE A) Applicant attributed his tax-filing lapses to being disorganized and not focused on his tax filing obligations. (Tr. 29-30)

In November 2021, Applicant received a notice from the IRS that the Service did not accept his filed federal tax returns for tax years 2012-2015 due to the lack of a signature on the late-filed returns. (AE D; Tr. 31) He did not refile his 2012-2015 returns (all signed) until March 2022 and has been denied his claimed refunds because his claimed refunds were too late for consideration. (AE B; Tr. 31-32) Applicant is satisfied that he does not owe the IRS or his state and local district taxing authorities any monies for tax years 2012-2015. (Tr. 34-35)

Applicant is current with all of his debts and earns \$136,000 a year. (Tr. 28) He maintains a strong credit standing (save for his filing lapses).

### **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 failure to timely file his federal, state, and local district income tax returns for tax years 2012-2015. While he subsequently filed his federal and state tax returns in 2021, his multiple filing lapses raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly.

### **Financial concerns**

Applicant’s multiple tax-filing lapses warrant the application of one of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶ 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,” applies to Applicant’s situation.

Applicant’s admitted tax-filing lapses, albeit accompanied by explanations of his updated filing of his tax returns, 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 tax-filing failures are fully documented and create judgment issues as well 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 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 evidence of IRS, state, or district approved extensions of the times allotted for his filing his tax returns, or good cause demonstrated for his untimely filing of tax returns for tax years 2012-2015, 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).

### **Whole-person assessment**

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his history of 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 not enough at this time to overcome his repeated failures or inability to address his tax-filing responsibilities in a timely way over the course of many years. Overall trustworthiness, reliability, and good judgment have not been established.

Applicant’s past failures to file his federal, state, and local district tax returns in a timely and responsible way reflect adversely on his ability to maintain his finances in a sufficiently stable manner to meet the minimum requirements for holding a security clearance. 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

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 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.b:

Against 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