



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



In the matter of: )  
 )  
----- ) ISCR Case No. 22-00887  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2022

**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 September 7, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guidelines the DoD CAF 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 on February 18, 2022, and elected to have his case decided on the basis of the written record, in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on July 14, 2022, and interposed no objections to the materials in the FORM. He did not respond to the FORM, and the case was assigned to me on October 3, 2022.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 10 delinquent debts exceeding \$119,000. Allegedly, these debts remain unresolved and outstanding.

In Applicant's response to the SOR, he admitted all of the alleged delinquent debts with explanations. He claimed he faced challenging conditions in his personal life, inclusive of having a difficult deployment schedule during his military tour of duty, a lengthy legal separation, and a loss of all of his properties and assets in his name, attributable to a hurricane. He also claimed he used poor judgment in managing his finances; he has received debt counseling from his military services; and he has explored legal options to settle his debts. He claimed, too, that as a last resort he is considering bankruptcy to resolve the debts he cannot otherwise pay. Finally, he claimed he accepts full responsibility for his financial mistakes and understands the reasons for questioning his clearance eligibility.

### **Findings of Fact**

Applicant is a 44-year-old civilian 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 September 1998 and divorced in February 2006. (Item 3) He has one adult child from this marriage. He remarried in May 2007 and divorced in April 2017. (Item 3) He has two children from this marriage. Applicant currently cohabitates with another person. (Item 3) Applicant earned a high school diploma in May 1996. He attended college classes in 2010 but did not earn a degree or diploma. (Item 3) He enlisted in the Marine Corps in February 1997 and served 21 years of active duty before he received an honorable discharge in in October 2018. (Item 3)

Since December 2018, Applicant has been employed by his current employer. (Item 3) He reported unemployment between October 2018 and December 2018.

### **Applicant's finances**

Applicant presents with a lengthy history of financial difficulties. (Items 3-11) In 2005, he and his first wife petitioned for Chapter 7 bankruptcy relief. (Item 5). Applicant scheduled \$20,184 of secured debts and \$35,811 of unsecured obligations in his

petition. (Item 5) This bankruptcy petition was discharged in February 2006 as a no-asset case. (Item 5)

Between 2013 and 2018, Applicant accumulated ten delinquent debts exceeding \$119,000. Applicant attributed his debts to a combination of poor judgment in managing his finances, difficult deployments during his military tour of service, a lengthy legal separation, and a loss of all of his properties and assets in his name from a hurricane. (Item 2) Records document that Applicant has taken no cognizable actions to address his delinquent debts or provide information of what actions he has taken to resolve his debts. Without more information from Applicant, he cannot be credited with any favorable actions in paying or otherwise resolving his SOR-listed debts.

### **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 accounts (ten in all, exceeding \$119,000) since his discharge from Chapter 7 bankruptcy in 2006. His manifest failure to address these debts raises trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly.

### **Financial concerns**

Applicant’s multiple debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), “inability to satisfy debts” and 19(c), “a history of not meeting financial obligations.” Each of these DCs apply to Applicant’s situation

Applicant’s admitted delinquent debt accumulations 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 delinquent debt accruals 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 delinquent accounts 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 payment or other successful resolution of his cited delinquent debts, 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 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 accumulation of delinquent debts over considerable period of time is fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for his military service and work in the defense industry, his efforts are not enough at this time to overcome his repeated failures or inability to address his delinquent accounts in a timely way over the course of many years. 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 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.j:

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.

---

Roger C. Wesley  
Administrative Judge