



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



In the matter of: )  
)  
) ISCR Case No. 22-00246  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

03/30/2023

**Decision**

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns arising from his unpaid taxes, delinquent judgments and debts, and excessive gambling. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 14, 2021. On March 11, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on April 5, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on August 16, 2022. On August 18, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on August 25, 2022, and provided a short narrative response on October 13, 2022, which I have marked Applicant Exhibit (AE) A. The case was assigned to me on January 26, 2023. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

### **Findings of Fact**

Applicant is 62 years old. He married in 1984 and has two adult children. He served in the Navy from 1978 to 1982, and in the Air Force Reserve from 1982 to 2010, and received honorable discharges. He has taken some college classes but has not earned a degree. He has worked for government contractors since at least 2011. (Item 3)

On his 2021 SCA, Applicant reported financial problems due to gambling from 2007 to 2012. He stated that his gambling resulted in maxing out his credit cards, depleting his savings, and a mortgage delinquency. (Item 3)

The SOR alleges eight unpaid judgments totaling \$89,261 (SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.i, 1.l, 1.m); delinquent federal taxes for tax years 2010, 2011, 2013, 2014, and 2015, totaling \$60,773 (SOR ¶¶ 1.d, 1.g, 1.n, 1.o, 1.p); two unpaid federal tax liens from 2011, totaling \$31,362 (SOR ¶¶ 1.h, 1.j); failure to file a federal income tax return for tax year 2012 (SOR ¶ 1.k); a state tax debt for \$2,476 (SOR ¶ 1.q); a debt in collection for \$938 (SOR ¶ 1.r); and that Applicant's unpaid and delinquent debts were caused in part from excessive gambling (SOR ¶ 1.s). (Items 3, 4, 5, 6, 7, 8, 9, 10)

In Applicant's Answer to the SOR, he admitted SOR ¶¶ 1.a-1.j, 1.l-1.p, 1.r, and 1.s. He denied SOR ¶¶ 1.k and 1.q. His admissions are incorporated in my findings of fact.

With respect to SOR ¶ 1.k, Applicant claimed that he filed his federal income tax return for tax year 2012, and the Government did not provide sufficient documentation to establish this allegation. For SOR ¶ 1.q he claimed that he had a payment plan to resolve his state tax debt. He provided a letter from the state tax commission stating that he does not have any outstanding liabilities for his account. These two tax issues are resolved. He did not provide documentation for any of the other SOR allegations. (Answer; AE A)

In his Answer, Applicant stated that his financial troubles started in 2008 when his daughter became pregnant in college. She moved home and he supported her and his grandson for four years. He did not state how much support she required, why she was unable to contribute to their household during those years, or in what specific way this impacted his finances. He reported that he lost his job in 2010 and used credit cards and casino earnings to generate income. On his 2017 SCA, he reported gambling as a reason for his delinquent debts. This SCA also shows that he left his employment with the Air Force in May 2010 because he hit his high-year tenure. This departure could not have

been unexpected or unplanned. He started his next job with a government contractor in September 2011. He claims that he has not been able to pay his creditors because of garnishments on his income and levies on his bank account. He claims that he is working with a tax service to set up a payment plan with the IRS. (Answer; Items 3, 10)

In his Response to the FORM, Applicant admitted that he has made poor decisions, but says that they do not define his character. He asserted that he did not have any bills listed as delinquent on a recent credit report that he obtained, but he did not submit a copy of that report. The most recent credit report in the record shows that he is still actively using his credit cards. The report shows that he has 16 revolving accounts, which have over a \$21,000 balance combined. He stated that in the past, he has gambled to increase his income. He has not had any counseling for gambling, but claims he has stopped through prayer and church attendance. He did not provide any other evidence that supports this claim. He reports that he has recently paid off his first and second mortgages. He asserts that he plans to pay off all of his debt. (AE A; Item 4)

Applicant submitted a character letter that states that he is a respectable employee, is a valuable asset, and is not a threat to national security. (Answer)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

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, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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 (4th 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible,

unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The Appeal Board held in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

Failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No, 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations;
- (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; and
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

The SOR allegations are supported by Applicant's admissions and the record evidence. AG ¶¶ 19(a), 19(c), 19(f) and 19(h) apply.

The following mitigating conditions are potentially relevant:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply. Applicant's unpaid and delinquent debts are recent, ongoing, and unresolved. He did not provide sufficient evidence to establish that the debts occurred under circumstances that are unlikely to recur. These financial issues cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant did not provide sufficient evidence showing that his unpaid and delinquent debts occurred largely due to circumstances beyond his control. He did not provide sufficient evidence showing that he acted responsibly under the circumstances. While he has recently been able to pay off his first and second mortgages on his home, he has not made any documented payments on his federal tax debts.

AG ¶ 20(c) does not apply. Applicant has not submitted sufficient documentation showing that he has received financial counseling from a legitimate and credible source for his unpaid or delinquent debts, his tax issues, or his gambling problem. There are not clear indications that the problem is being resolved or is under control. He reported that he had a serious gambling problem and that it was one of the main causes for his financial problems. However, he did not provide sufficient evidence to find that he no longer gambles.

AG ¶ 20(g) applies to SOR ¶¶ 1.k and 1.q. It does not apply to any of the other tax-related SOR allegations. He has known about his tax debts for many years, and he has not made any documented effort to resolve them.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). I considered his employment history, military service, and character letter. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his unpaid taxes, delinquent judgments and debts, and excessive gambling.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.s:	Against Applicant

### **Conclusion**

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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Ross D. Hyams  
Administrative Judge