



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



In the matter of: )  
 )  
----- ) ISCR Case No. 22-01135  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

07/18/2023  
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**Decision**  
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WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate the financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On July 5, 2022, 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 guideline the DCSA 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 July 11, 2022, and requested a hearing. This case was assigned to me on April 6, 2023. A hearing was scheduled for June 5, 2023 via Microsoft Teams teleconference services, and was heard on the scheduled date. At the hearing, the Government's case consisted of seven exhibits. (GEs 1-7) Applicant relied on one witness (himself) and three exhibits (AEs A-C). The transcript (Tr.) was received on June 14, 2023.

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated five delinquent consumer debts exceeding \$7,000 and child support arrears exceeding \$146,307. Allegedly, these debts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted four of the alleged SOR debts (covered by SOR ¶¶ 1.b, and 1.d-1.f, but denied the allegations covered by SOR ¶¶ 1.a and 1.c. ) He provided no explanations or clarifications.

### **Findings of Fact**

Applicant is a 39-year-old employee of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

#### **Background**

Applicant married in March 2004 and divorced in in September 2005. (GE 1) He has no children from this marriage. He remarried in March 2012 and divorced in May 2017. He has two children from this marriage (ages 15 and nine). (GE 1; Tr. 22) He remarried for his third marriage in July 2017 and separated in April 2020 without any children from the marriage. (GEs 1-2; Tr. 49) Currently, Applicant is waiting for his third spouse to file for divorce. (GE 4) He does not know of the whereabouts of his third spouse, and he has no known financial obligations to her. (GE 4)

Applicant earned a high school diploma in June 2001. He enlisted in the Air Force (AF) in 2002 and served 11 years of active duty before receiving an honorable AF discharge in September 2013. (GEs 1-2; Tr. 21)

Since October 2018, Applicant has been employed by his current employer. (GEs 2-3; Tr. 20) Previously, he worked for other employers. He reported unemployment between September 2013 and September 2014, and between September 2017 and December 2018. (GEs 2-3) Applicant held a security clearance while in the Air Force. (GE 2)

#### **Applicant's finances**

Between 2017 and 2021, Applicant accumulated a number of delinquent consumer debts. (GEs 5-6) He attributed his debt delinquencies to losing his job in

September 2017 and becoming depressed with suicidal symptoms that required 30 days of inpatient hospitalization to stabilize him. (GE 2)

Between April 2007 and February 2016, Applicant resided with his then-fiance who in 2012 became his second spouse. (GE 2) For the first four years of their relationship, Applicant shared half of his fiance's mortgage expenses. (GE 2) Separating from his spouse in February 2016, Applicant briefly resided in a State A apartment (February 2016 to July 2016) before moving on to State B without any evidence of voluntary spousal and child support to his second spouse of four years and two small children. (GE 2)

What steps Applicant's second spouse pursued to induce Applicant to provide voluntary spousal and child support prior to their May 2017 divorce is not fully developed in the record. Some evidence of his possible post-divorce voluntary efforts to provide monetary support to his wife and children is reflected in his 2021 personal subject interview (PSI) acknowledgements that he became delinquent on his child support "payment of \$10,000" to his former spouse and children "after he lost his job." (GE 3) any pre-divorce child and spousal discussions he may have had with second spouse is not evidenced in the record.

Credit reports confirm Applicant's accumulation of five delinquent consumer accounts between 2018 and 2021 as follows: SOR ¶ 1.a (for \$3,932); 1.b (for \$556); 1.d (for \$1,634); 1.e (for \$1,021); and 1.f (for \$6,558). (GEs 5-6) While Applicant disputed one of these listed SOR debts (SOR ¶ 1.a), he provided no documentary support for his dispute of the debt. None of the remaining consumer debts listed in the SOR are supported by any documentation or other corroborating evidence of payment or payment arrangements.

Income withholding orders (IWOs) were issued by State B's child support services agency to Applicant's employer in October and December 2018, respectively, in accordance with an issued 2016 court order in State A to withhold from Applicant's monthly pay portions of his income to cover current and arrears child and spousal support. (AEs A-B) The 2018 IWOs issued by the State B child support services agency directed Applicant's employer to deduct monthly amounts as follows: \$1,413.90 a month for current child support; \$468.70 a month for past-due child support-(arrears greater than 12 weeks); \$23.55 a month for current cash medical support; \$7.98 a month for past-due medical support; and \$1,516.16 a month for past-due spousal support, for a total amount withholding of \$3,928 a month. (GEs 1-6 and AEs A-B; Tr. 18)

By all accounts, portions of Applicant's monthly income have been regularly withheld by his employer between October 2018 and February 2023 in partial compliance with the 2018 IWOs. (GEs 1-2) Asked at hearing whether spousal and child support have been withheld from his monthly pay, Applicant responded in the affirmative. (Tr. 27-28, 42-3) Applicant's acknowledgements were credible and were accepted by the Government in closing. (Tr. 48) Because Applicant's monthly withholding has been consistently less than what was prescribed in the IWOs, his withheld payments have never come close to the withholding amounts prescribed in the 2018 IWOs. (Tr. 26) As a result, reductions in the principal spousal and child support

balance have not been achieved. (GEs 5-6; Tr. 41) Credit reports confirm that between 2021 and 2022, the principal balance on Applicant's spousal and child support arrears increased from a \$130,000 range to a \$146,000 range. (GEs 5-6) Without any credited reduction in the reported balance owing, the principal balance of the arrears can be expected to increase over time.

Applicant's efforts between 2019 and 2022 to meet with child support services personnel "to have the amount owed reduced and my child support order modified," to include reductions in his monthly child support withholding and overall principal balance, were never successful. (GE 1; Tr. 28) And, meeting requests by the State B child support services agency to discuss Applicant's pay status could never be agreed on with Applicant. (Tr. 27)

A revised IWO was issued to Applicant's employer in February 2023. (GE 7) In this IWO, Applicant's employer was directed to withhold portions of Applicant's pay in accordance with a revised withholding schedule, Applicant's employer was directed to withhold monthly amounts from Applicant's pay as follows: \$1,413.90 a month for current child support; \$180.68 a month for past-due child support (arrears greater than 12 weeks); \$23.55 a month for current cash medical support; \$4.65 a month for past-due cash medical support, and \$314.67 a month for past-due spousal support, for a total amount withheld of \$1,937.45 a month. (GE 7)

Currently, Applicant's employer withholds between \$150 to \$200 bi-weekly (still 50 % of his take-home pay) to cover the withholding criteria set by State B's withholding orders. (Tr. 40) Based on the evidence presented, Applicant and his employer have complied with been in compliance with the issued February 2023 IWO. Applicant currently makes \$20 an hour, which represents an increase over his hourly pay in 2018 (only \$15 an hour). (Tr. 21) In addition to his hourly wages, he receives a 70 % disability from the Veterans Administration (VA) that amounts to \$2,000 a month. While he was unemployed for a year after being "written off of his contract" in September 2017, he made no child support payments; even though he received notices of the IWOs from the child support agencies in both State A and State B. (GE 2; Tr. 24)

Applicant's efforts to enforce his child visiting rights with his ex-spouse and mother of his two children have not been successful. She has consistently denied him visiting privileges with his children. (Tr. 46) Further, he has had no communications with his ex-spouse about enlisting her support and assistance in his efforts to obtain child support reductions. (Tr. 45)

Applicant currently rents his home (\$1,000 a month) and expends \$840 a month on an expensive vehicle he purchased in 2019, which he characterized as his "dream car." (GEs 5-6; Tr.30-31, 38) He is in compliance with his payment obligations with his current credit card accounts. (Tr. 39)

### **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 reported accumulation of (a) five delinquent consumer debts exceeding \$7,000 and (b) child and spousal support arrears originating in State A in the amount of \$146,607 and currently being enforced through IWOs issued in State B. These collective debt delinquencies and 2023 child and spousal support order in place warrant the application of three of the disqualifying conditions (DC) of the financial considerations guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19(b), "unwillingness to satisfy debts regardless of the ability to do so"; and 19(c), "a history of not meeting financial obligations." Each of these DCs apply to the specific facts of Applicant's situation.

Applicant's admitted delinquent 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 delinquent 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 and resolving debt delinquencies is 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).

Applicant's cited explanations for his debt delinquencies (primarily due to losing his job in 2017 and becoming depressed with suicidal symptoms) are insufficient to warrant the full application of any of the potentially available mitigating conditions to his reported delinquent consumer debts. MC ¶ 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" has some application to Applicant's circumstances in light of his cited periods of unemployment and spousal separations. Application of MC ¶ 20(b) is very limited Applicant's case, however, for he has failed to satisfy the "the acting responsibly" prong of MC ¶. 20(b) following his return to full-time employment in 2018.

Currently, Applicant has no well-developed financial plan or refined budget in place to aid him in mitigating the Government's financial concerns over his delinquent debts. And, with the exception of the consumer debt covered by SOR ¶ 1.a (which he disputes without documentary support), he has made no concerted efforts to resolve his

delinquent accounts with the ample resources available to him over the past four years in which he has been gainfully employed on a full-time basis.

Of continuing security concern are the two State B IWOs covering Applicant's child and spousal support owed to his ex-wife residing in State A. By far, these IWOs that have since been revised and consolidated under a February 2023 IWO represent Applicant's largest debt and currently exceed \$146,307 in current and arrears child and spousal support. These IWOs have been in force since 2018 have consistently been enforced and complied with over the past five years without any breaks in withholding of the calculated amounts deducted from Applicant's monthly income.

While the income withheld from Applicant's monthly pay under the IWOs in force have been involuntary, the withholdings are distinguishable from garnishments and attachments customarily used in enforcement actions. See ISCR Case No. 20-03457 at 3-4 (App. Bd. June 15, 2023) Unlike customary garnishments, Applicant's withheld income for child and spousal support (both current and arrears) are not considered punitive under the laws of his current state of residence. See A.R.S., §§ 25-505 and 25-505.01. Rather, IWOs are treated as imposed payment obligations on Applicant to ensure his children's comfort and well-being. Put another way, the income withholding (for both current and arrears child and spousal support) imposed on Applicant are considered under the IWO law of State B to be withholding for both current and arrears amounts due and in this respect is distinguishable from garnishment.

Still, Applicant's income withholding in compliance with the IWOs in force in States A and B cannot be considered sufficient to fully meet the good-faith repayment requirements of MC § 20(d). For Applicant's withheld income to reflect good-faith payment initiatives, some form of voluntary acceptance of withholding on his part was required. Nothing in the recitations of the IWOs in issue make any mention of Applicant's concurrence in the issued IWOs. So while the IWOs in issue are distinguishable from garnishments, they do not equate to any form of voluntary, good-faith repayment actions on Applicant's part.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. 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). Based on the evidence presented, Applicant is not able to demonstrate a sufficient tangible track record of actual debt reduction with respect to his consumer debt delinquencies to satisfy Appeal Board guidance.

By contrast, the State B IWOs in force over the past five years that have dictated the withholdings of his income to cover his current and arrears child and spousal support, reflect a considerable period of IWO compliance, even if they have not been fully implemented due to Applicant's minimal monthly income subject to withholding. For so long as Applicant remains employed by his current employer, or other employer in State B, he can be expected to be subject to the IWOs in place until they expire, or are otherwise withdrawn.



## Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a clearance. Taking into account Applicant's credited defense contributions and his explanations as to why he fell behind with his consumer debt obligations, insufficient evidence of addressing his delinquent consumer debts has been presented to enable him to maintain sufficient control of his finances to meet minimum standards for holding a security clearance. Excepted are Applicant's child and spousal support obligations (both current and arrears) that have been steadily addressed in compliance with the IWOs in force and can predictably be expected to be enforced and honored in the foreseeable future.

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 and 1.d-1.f.: | Against Applicant |
| Subparagraph 1.c:                   | 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