



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-02190  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2023

**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 January 12, 2021, the Defense Counter Intelligence and Security Agency Consolidated Central Adjudications Facility (DCISA CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guidelines the DCISA 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 (undated) and requested a hearing. This case was assigned to me on January 21, 2023. A hearing was scheduled for June 21, 2023, and was heard as scheduled. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5) Applicant submitted no documents and relied on one witness (himself). The transcript (Tr.) was received on July 3, 2023.

### **Procedural Issues**

Prior to the opening of the hearing, the Government moved to amend subparagraph 1.c of the SOR to substitute tax years 2017 through 2019 for tax years 2014, 2017, and 2019. For good cause shown, the Government's motion was granted. (Tr. 19) After further review of the tax transcript covering credited Applicant payments for tax year 2018 (leaving a zero balance owing), the Government withdrew its requested amendment of SOR ¶ 1.c, without resubstituting allegations of federal taxes owed for tax year 2014. (Tr. 63-64)

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 tax and debt records. For good cause shown, Applicant was granted 30 calendar days to supplement the record. (Tr. 68) Department Counsel was afforded seven days to respond. (Tr. 69) 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 2015 and 2016. Allegedly, these tax returns remain unfiled. Additionally, Applicant allegedly accumulated delinquent tax, consumer, and medical debts that also remain unresolved and outstanding.

In Applicant's response to the SOR, he admitted all of the alleged failure-to-file allegations with explanations. He claimed he has been unsuccessful in his efforts to contact the Internal Revenue Service (IRS) and state taxing authority to resolve any outstanding filing lapses and balances owed. He also claimed that he is unaware of any debts owed to SOR creditors 1.c and 1.d and 1.f through 1.h, despite his past efforts to ascertain any unpaid balances with these creditors.

### **Findings of Fact**

Applicant is a 43-year-old employee 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 December 2007, separated in May 2013, and later divorced. (GE 1; Tr. 34) He has three children from the marriage. Since 2020, he has paid monthly child support to his former spouse of between \$400 and \$500. (GE 1; Tr. 35-

36) Applicant remarried in October 2021. He earned a high school diploma in June 2009 and attended some college classes between May 2007 and November 2013 without earning a degree or diploma. (GE 1) Applicant did not report any military service and has never held a security clearance. (GEs 1-2)

Since November 2014, Applicant has worked for his current defense contractor as a technical writer. (GE 1) Between May 2007 and November 2013, he worked as a production artist for another employer. He reported unemployment between November 2013 and November 2014.

### **Applicant's finances**

Records document that Applicant did not timely file his federal and state income tax returns, as required, for tax years 2015 and 2016. (GEs 1-2) Applicant could offer no justifiable excuse for his failure to file his tax returns. (Tr. 39-40) His tax transcripts for tax years 2015-2016 report no tax return filings. The payment plan he completed for tax year 2014 covers only tax year 2014. (GE 2; Tr. 50-51)

Denying any past-due federal income taxes for tax years 2014, 2017, and 2019 in his response, Applicant claimed unsuccessful efforts to obtain clarification from the IRS or state taxing authority about any reported delinquent balances to either taxing agency. (Applicant's response; (Tr.40-41) Without any documentation of his efforts to resolve his tax issues, no potentially favorable inferences can be drawn with respect to federal taxes owing for tax years 2017 and 2019. Allegations of federal taxes owed for tax year 2014 were withdrawn.

Besides his tax-filing lapses and accrued tax delinquencies, Applicant accumulated delinquent consumer and medical debts exceeding \$1,500. (GEs 3-5) All of these alleged debt delinquencies are listed in the documented credit reports (GEs 3-5) and are neither refuted nor credibly challenged by Applicant with any documented submissions of his own. Most of the creditors that Applicant contacted told him only that the debts he inquired about were previously charged off. (Tr. 53-54) Only SOR creditor 1.d expressed any willingness to work with Applicant on settling its debt (for \$1,360). (Tr. 53) However, this creditor never followed up with any offer to Applicant. (Tr. 53-54)

Applicant has not documented any follow-up contacts he had with any of the consumer and medical creditors who may still be holding delinquent accounts belonging to him. Absent credible evidence from Applicant dispelling the information covered in the Government's credit report submissions, presumptions of accuracy that typically attach to credit reports compiled by reputable credit reporting agencies are entitled to acceptance.

### **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 multiple failures to timely file his federal and state income tax returns for tax years 2015 and 2016 raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly. Additional security concerns are raised over Applicant’s accumulation of delinquent federal taxes owed for tax years 2017 and 2019, in addition to accrued consumer and medical debts.

### **Financial concerns**

Applicant’s multiple tax-filing lapses and unresolved tax and other debt delinquencies warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), “inability to satisfy debts”; 19(c), “a history of not meeting financial obligations”; and 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,” apply to Applicant’s situation.

Applicant’s admitted tax-filing lapses, 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 with respect to tax years 2015 and 2016 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 tax-filing lapses and documented delinquencies in tax and other consumer and medical 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 IRS or state 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 2015-2016, 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)

Similarly, Applicant's failure to credibly document his challenges to most of the reported tax (save for tax year 2018) and other debt delinquencies listed in the SOR, preclude his availing of any of the mitigating conditions potentially available to him. Without credible challenges to the information reported in his credit reports about the delinquent status of the tax, consumer, and medical debts covered in the SOR, favorable inferences cannot be drawn as to Applicant's exoneration claims. Only owed federal taxes for tax year 2018 is credibly resolved in Applicant's favor. Federal taxes owed for tax years 2017 and 2019 remain unaddressed and outstanding.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of multiple tax-filing lapses (i.e., tax years 2015-2016) and accumulation of unresolved tax, consumer, and medical debts are 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 and debt delinquencies responsibilities in a timely way over the course of several years. Overall trustworthiness, reliability, and good judgment have not been established.

Applicant's past failures to file his federal and state income tax returns in a timely and responsible way and timely discharge any tax, consumer, and medical accounts 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 control of 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.h:

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