



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



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 22-00236

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

11/09/2023

**Decision**

WESLEY, ROGER C. Administrative Judge

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

**Statement of the Case**

On November 18, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Services (CAS) (effective June 13, 2022) issued a Statement of Reasons (SOR) to Applicant detailing reasons why under the financial considerations and personal conduct guidelines the DCSA CAS 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 November 30, 2022,, and requested a hearing. This case was assigned to me on May 3, 2023. A hearing was scheduled for July 14, 2023, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of six exhibits. (GEs 1-6) Applicant relied on one witness (himself) and one exhibit AE A). The transcript (Tr.) was received on July 7, 2023.

### **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 updated payment information regarding the debts covered by SOR ¶¶ 1.a and 1.c. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded two days to respond, Within the time permitted, Applicant furnished documentation covering his payment efforts regarding SOR ¶¶ 1.b and 1.e. Applicant's post-hearing submissions were admitted without objections as AEs B and E.

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated five delinquent debts exceeding \$40,000. Allegedly, Applicant's delinquent debts remain unresolved and outstanding.

Under Guideline E, Applicant allegedly (a) was arrested in June 2018 and charged with public lewdness for masturbating on a public walking trail, thereby committing a sexual act in public, for which he pleaded guilty and received six months' deferred adjudication and a fine of \$429; (b) falsified material facts during a September 25, 2021 personal subject interview (PSI) with a DoD investigator, when he told the investigator the public lewdness charges were limited public urination; (c) unlawfully choked an individual with his hands, for which he received a record of non-judicial punishment (NJP) (inclusive of reduction of grade and 45 days of extra duty) (d) committed an Air Force disciplinary infraction in March 2004, when he failed to pay the debts he owed the Air Force and received a letter of reprimand in April 2004; and (f) committed an Air Force disciplinary infraction in November 2001 when he made a false official statement with the intent to deceive, for which he received a record of non-judicial punishment (inclusive of reduction in grade).

In his response to the SOR, Applicant admitted all of the allegations pertaining to his finances with explanations and clarifications. He claimed he had made monthly payments to four of the SOR creditors and could not find one of the listed creditors (SOR ¶ 1.b) in his credit reports. He further claimed that he exercised poor judgment in connection with his handling of each of his listed accounts. Addressing the multiple incidents cited under Guideline E, he admitted all of the allegations with explanations and clarifications. He claimed he exercised poor judgment in connection with each of the cited incidents.

## Findings of Fact

Applicant is a 53-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 August 1998 and divorced in August 2007. (GE 1) He remarried in July 2008 and divorced in December 2018. (GE 1) He has three children from this marriage. (GE 1) He married for the third time in August 2019 and has two stepchildren from this marriage. (GE 1) Applicant attended college classes at various institutions between January 1999 and August 2001 without earning a degree or diploma. (GE 1) He enlisted in the Air Force in March 1992 and served 12-plus years of active duty before receiving a general discharge under honorable conditions in October 2004. (GE 1)

Since August 2017, Applicant has worked for his current contractor as a quality assurance inspector. (GEs 1-2) Between 2010 and 2017, he worked for other employers. As a civilian, he has held a security clearance since June 2006. (GE 1)

### Applicant's finances

Citing financial difficulties associated with his divorce from his second wife in 2018, and improvident spending by his first wife, Applicant accumulated a number of delinquent accounts (six in all) between 2013 and 2019, exceeding \$40,000 in the aggregate. The SOR-listed debts are comprised of the following: SOR ¶¶ 1.a (an individual account opened in 2013 to finance a vehicle with a reported post-repossession balance of \$12,699); 1.b (an individual account opened in 2013 to finance a \$15,000 vehicle with a reported post-repossession balance of \$9,140); 1.c (an individual account opened in 2017 with a reported current balance of \$3,316); 1.d (an individual account opened in 2017 with a reported current balance of \$10,225; and 1.e (an individual account opened in 2018 to finance a vehicle purchase with a reported post-repossession balance of \$8,554).

While Applicant has made sporadic payment progress with several of his SOR creditors, he has failed to follow through with documented good faith payments and payment plans with his creditors since his debts became delinquent. (GEs 4-5; Tr. 60-65) Promised receipts of payments to these creditors never materialized. Claiming to have a payment agreement with SOR creditor 1.d, the documentation supplied by applicant does not match any of the creditor information covered in his credit reports. *Compare* the information covered in AE A with the compiled credit bureau data in GEs 4-5.

Based on the documentation furnished by Applicant, none of the delinquent debts covered by the SOR can be credited to Applicant as either favorably resolved or

in the process of being favorably resolved. Each of Applicant's listed SOR accounts remain in delinquent status.

### **Applicant's arrest, Air Force disciplinary infractions, and PSI omissions**

Applicant's 2018 arrest and multiple disciplinary infractions over the course of his Air Force career are considerable. While in the Air Force, Applicant committed multiple disciplinary infractions, for which he received NJP. They are documented as follows: a false official statement with intent to deceive in November 2021, for which he received a reduction in grade; engagement in a sexual relationship with a subordinate between July and August 2002, for which he received a reduction in grade and forfeitures of \$500 pay per month for two months and 45 days of extra duty; unlawful choking an individual with his hands, for which he received a reduction in grade and 45 days of extra duty; and failure to pay debts owed the Air Force for misuse of a Government credit card in March 2004, for which he received a letter of reprimand. (GE 6)

Records document that in April 2018, Applicant was arrested and charged with public lewdness for masturbating on a public walking trail (a sexual act in public). Appearing in court to answer the charges, he pleaded guilty and received six-months of deferred adjudication and a fine of \$429. (GEs 3-4)

In a September 2021 PSI with an investigator from the Office of Personnel Management (OPM), Applicant was asked to describe the incident involving his 2018 public lewdness arrest and charge. (GE 2) Responding to the investigator's inquiry, Applicant characterized the charge as limited to public urination. (GE 2) In his own account of the incident, he failed to disclose the charged conduct and ensuing guilty plea covering his masturbating in public. Applicant's withholding of material information about the details of his arrest and conviction from the investigatory constituted knowing and willful withholding of material facts about his arrest, charges, and ensuing guilty plea. (GEs 2-4)

### **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.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative and adjudicative processes. . . . AG ¶ 15.

### **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 five delinquent debts exceeding \$40,000. These 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.

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 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).

Applicant's cited divorce as a contributing source of his debt delinquencies accrued during his marriage reflects some extenuating circumstances beyond his ability to manage and control; although all of the listed SOR accounts were opened individually in his name. Considering all of the circumstances surrounding Applicant's added financial burdens mitigating condition (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," is partially applicable to Applicant's to situation.

Applicant's failure to address his delinquent accounts once the issues associated with his 2018 divorce and judgment lapses had passed prevented him from taking advantage of the full benefits of MC ¶ 20(b). Because he has not demonstrated enough exercise of financial responsibility following his divorce, he is not in position to take full advantage of the second prong of MC ¶ 20(b), "acted responsibly under the circumstances." Without more demonstrated effort in addressing his major debts, most of whom stem from deficiency balances following the repossessions of three of his automobiles, Applicant remains short of meeting the minimum eligibility requirements for holding a security clearance.

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 unable to demonstrate a sufficient tangible track

record of actual debt reduction to satisfy Appeal Board guidance associated with the good-faith payment requirements of MC ¶ 20(d).

### **Personal Conduct Concerns**

Additional security concerns arise over Applicant's arrest and disciplinary history and failure to disclose relevant material information to an OPM investigator when asked to do so. Applicant's presented history of arrests, disciplinary infractions, and candor lapses, for which he failed to timely correct, warrant the application of two DCs of Guideline E. DCs ¶¶ 16(b), "deliberately providing false or misleading information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative"; and DC 16(c), "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information, fully apply to the facts and circumstances covering Applicant's situation.

Considered together, Applicant's history of multiple disciplinary infractions incurred during his 12-plus year Air Force career, his lewdness arrest with a deferred adjudication, and his candor lapses about the details of his public lewdness incident when questioned by an OPM agent in a PSI conflate to create material questions about his overall trustworthiness, reliability, and good judgment. None of the mitigating conditions potentially available to Applicant are applicable.

### **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, the extenuating circumstances associated with his divorce, the current state of his finances, and the judgment lapses associated with his with Air Force infractions, more recent public lewdness arrest and guilty plea, and the misleading information furnished the OPM investigator in his 2021 PSI, insufficient evidence has been presented to enable him to maintain sufficient control of his finances to meet minimum standards 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 and personal conduct 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.e: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.f: 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