



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



In the matter of:

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ISCR Case No. 22-01721

Applicant for Security Clearance

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

12/14/2023

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant’s failure to timely resolve several delinquent accounts and state income tax issues raise questions about his judgment and reliability. The security concerns raised under Guideline F, Financial Considerations, are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 25, 2019, Applicant completed and signed his Electronic Questionnaires for Investigations Processing (e-QIP). (Government Exhibit (GE) 1) On September 21, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant 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* (Directive) (January 2, 1992), as amended; 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.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations. On October 31, 2022, Applicant responded to the SOR and requested a hearing before an administrative judge. On December 8, 2022, Department Counsel was ready to proceed. The case was assigned to me on June 14, 2023. On September 21, 2022, the Defense Office of Hearings and Appeals issued a notice of hearing, setting the hearing for August 29, 2023. The hearing was held as scheduled via video-conference.

During the hearing, Department Counsel offered five exhibits, Government Exhibits (Gov) 1 - 5, which were admitted without objection. Applicant offered one exhibit which was admitted as Applicant Exhibit (AE) A, without objection. The record was held open until September 12, 2023, to allow Applicant to submit additional exhibits. He timely submitted two exhibits which were admitted as AE B and AE C, without objection. On September 12, 2023, DOHA received a transcript (Tr.) of the hearing. The record closed on that date.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he denied the allegation in SOR ¶ 1.b and admitted all remaining allegations in the SOR. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 54-year-old employee of a defense contractor seeking to obtain a security clearance. He has worked for his current employer since August 2019. He served on active duty in the United States Navy from 1987 to 2007. He retired at the rank of E-7 with an honorable discharge. He held a security clearance while serving on active duty for approximately 18 years. When he retired, he worked for a defense contractor until he was laid off in 2010. He was unemployed between December 2010 and August 2014. During this period, he was a full-time student attending college using his GI bill benefits. He graduated in 2014 with an associate degree. After graduating, he worked for several employers prior to his current position. He has been married since September 2012. He has two children from prior marriages and his wife has three children from prior marriages. The children are 17, 19, 22, 25 and 27. With the exception of the oldest child, all children live with them. (Tr. 18-20, 22-26; Gov 1)

### **Financial Considerations**

The SOR alleges two tax debts, five commercial debts, and two medical debts, totalling approximately \$4,396. Specifically, Applicant owes State A \$500 for delinquent taxes for tax year 2008 (SOR ¶ 1.a: GE 2 at 2; GE 3 at 6-7). Applicant is also alleged to owe delinquent taxes (amount unknown) for tax year 2008 to State B. (SOR ¶ 1.b: GE 2 at 2).

Additional delinquent accounts alleged in the SOR include: a \$1,511 delinquent cell phone service account placed for collection (SOR ¶ 1.c: GE 3 at 5; GE 4 at 2; GE 5 at 8); a \$939 delinquent credit card account placed for collection (SOR ¶ 1.d: GE 3 at 3; GE 4 at 2; GE 5 at 8); a \$539 delinquent account placed for collection (SOR ¶ 1.e: GE 3 at 4; GE 4 at 2; GE 5 at 7); a \$577 delinquent account placed for collection (SOR ¶ 1.f: GE 3 at 4; GE 4 at 2-3; GE 5 at 7); a \$203 delinquent cable television account placed for collection (SOR ¶ 1.g: GE 3 at 5; GE 4 at 3; GE 5 at 7); a \$53 delinquent medical account that was placed for collection (SOR ¶ 1.h: GE 4 at 3); and a \$12 delinquent medical account that was placed for collection (SOR ¶ 1.i: GE 4 at 3)

Applicant admits he owes State A income taxes for 2008. (SOR ¶ 1.a) In April 2022, he set up a payment plan with State A to resolve the taxes owed. He agreed to pay \$50 a month. The first payment began on May 2, 2022. As of April 21, 2023, the balance owed was \$1,816.28. He has an allotment set up to make monthly payments. He believes he has six months remaining on the payment plan. He regrets not resolving this situation sooner. (Tr. 27-30; AE A)

Applicant disputes that he owes state income taxes to State B for tax year 2008. (SOR ¶ 1.b) Applicant moved from State A to State B in late 2008. He started a new job located in State B in December 2008. When filing his 2008 income tax returns, he received tax assistance from a tax counselor at a local Army installation. (Local military installations often provide free tax service for uncomplicated income tax returns.) Applicant was advised by the tax counselor that he did not need to file state income tax returns for State B because he worked in State B for less than one month and did not earn enough income in State B to warrant filing a state income tax return for 2008. (Tr. 31-32)

Approximately, five or six years later, State B contacted Applicant and told him that he owes state income taxes for the entire year for 2008, even though he only worked in State B for one month. State B claims he owes them \$7,000. Applicant admits he ignored the tax issue involving State B because he did not have the money. He plans to dispute the 2008 tax debt that State B claims he owes. He needs to get documentation from State A to show to State B that he worked and paid taxes to State A the majority of the year in 2008. (Tr. 32-33) This is complicated by the fact that he did not timely pay the taxes owed to State A for tax year 2008 and is in the process of resolving the tax debt to State A before he can present evidence to resolve the tax issue with State B.

Aside from tax year 2008, Applicant timely files his state and federal income tax returns each year. He has no other tax issues or liens. (Tr. 34)

The status of the remaining delinquent accounts are as follows:

SOR ¶ 1.c: \$1,511 delinquent cell phone account placed for collection: Applicant admits this debt but has made no arrangements to for pay this debt. He is aware he needs to take care of the debt. The debt remains unresolved. (Tr. 35; AE C at 20)

SOR ¶ 1.d: \$939 delinquent credit card account placed for collection: Applicant admits this debt. He just did not take care of it. The debt remains unresolved. (Tr. 36; AE C at 24-25)

SOR ¶ 1.e: \$598 credit card account placed for collection: Applicant admits this debt. He made no arrangements to resolve this debt. The debt is unresolved. (Tr. 37-38)

SOR ¶ 1.f: \$577 delinquent credit card account placed for collection: Applicant admits this debt. The account has been delinquent since October 2017. He did not make arrangements to pay this debt. The August 29, 2023 credit report submitted by Applicant indicates that he unsuccessfully disputed this debt on his credit report. The debt is unresolved. (Tr. 38; AE C at 21-22)

SOR ¶ 1.g: \$208 delinquent cable television account: Applicant believes this debt might be resolved. The account is no longer listed on his credit report. It is not clear whether this debt is resolved. (Tr. 38-39)

SOR ¶ 1.h: \$53 delinquent medical account: Applicant claims he paid the account off, but offered no proof. The account is no longer listed on his credit report. I find for Applicant regarding this account. The amount is de minimis. (Tr. 39)

SOR ¶ 1.i: \$12 delinquent medical account: Applicant claims he paid the account off, but offered no proof. The account is no longer listed on his credit report. I find for Applicant because the amount is insignificant and it is no longer on his credit report. (Tr. 39)

Applicant testified that one of his car loans is past due \$1,000. He is making monthly payments to resolve the past-due balance and pay the car loan off. There is a \$5,000 balance on the debt. His daughter drives the car. He has no other delinquent accounts. (Tr. 40-41) Most of the debts became delinquent between 2017 and 2019. During this time period, Applicant's income was not sufficient to meet expenses. Applicant's annual income was approximately \$35,000 during this time period. His wife earned approximately \$32 per hour. He and his family were renting a home on a former military base. The rent and expenses were much cheaper than living off base. The base closed the family housing and he and his family had to move off base, which increased his monthly expenses. His rent increased from \$1,100 to \$1,700. His priority was to put food on the table and pay his bills. Taking care of family was more important to him. All of the children lived with them and they also took in a friend of his son who was kicked out of his house. He lived with them for eight to ten months. (Tr 40-43)

Applicant's current expenses include rent: \$2,600; car insurance: \$1,000; car/gas \$1,300; groceries: \$300; and electric/water: \$1,000. He has approximately \$9,000 to \$11,000 in his 401(k) account. Applicant currently earns \$54,000 annually. His wife earns \$60,000 annually. His children help with buying food. He estimates he receives between \$700 and \$1,000 a month from the children to help pay bills and food. They currently have a young woman living with them who is the fiancée of the young man they took in several years prior. She will move out when they marry in December. She has lived with Applicant's family for one and half years and helps with utilities and food. (Tr. 44-50)

Applicant attended financial counseling a few years ago. He was not good at following a budget. He also tried debt consolidation with his credit cards two years ago. However, the credit card balances increased again. (Tr. 50-51)

Applicant's awards and decorations during his active duty service include: SSBN Strategic Deterrent Patrol Pin (9); Navy Good Conduct Medal (5), Global War on Terrorism Service Medal, Navy "E" Ribbon, Navy and Marine Corps Achievement Medal (4), Expert Rifleman Medal, Marksman Pistol Shot ribbon, Enlisted Submarine Warfare Breast Insignia, National Defense Service Medal (2), Navy and Marine Corps Commendation Medal, and Sea Service Deployment Ribbon. (AE B)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 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 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**

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

AG ¶ 18 expresses the security concern for financial considerations:

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. 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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;
  
- (c) a history of not meeting financial obligations: and

(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.

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable. AG ¶ 19(f) applies regarding the tax debts owed to State A and State B.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(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. Aside from the payment plan for 2008 state income taxes to State A, Applicant has not attempted to resolve any of the accounts alleged in the SOR. He ignored his income tax situation from 2008 for more than a decade. As a result, what should have been an easy problem to solve became more complicated. Applicant's failure to take steps to resolve his delinquent debts raise questions about his reliability, trustworthiness, and judgment.

For several years, Applicant's income was lower. Around 2017, he was forced to move his family from more affordable rental housing on a local military installation to rental housing in the local economy. This resulted in increased expenses. Circumstances beyond his control contributed to his financial issues. AG ¶ 20(b) partially applies. However, it is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. He neglected to resolve his tax problems related to whether he owed State B for state income taxes for tax year 2008 for years. He has paid off some debts that were not alleged in the SOR, but did not come up with a plan to settle the remaining delinquent debts. Aside from the state tax issues, the total amount of the debt is \$4,396. He did not act responsibly under the circumstances.

While Applicant testified that he has attended financial counseling, he admits he had difficulty following a budget and a payment plan. While Applicant intends to pay his debts, there is no clear indication that the problem is being resolved or under control. If Applicant meets with a financial counselor from a legitimate and credible source, such as a non-profit counseling service, and follows their advice, he is capable of resolving his delinquent accounts. AG ¶ 20(c) does not apply.

AG ¶ 20(d) applies with respect to Applicant's payment plan for the 2008 income tax debt with State A. He is making timely payments by monthly allotment. He has not taken steps to resolve the remaining debts so this mitigating factor is given less weight.

AG ¶ 20(e) does not apply. Applicant may have a legitimate dispute about filing and paying state income taxes in State B in 2008 because he only earned income in State B during the last month of the year. He was given bad advice and failed to file state income tax returns in State B. He learned he owed state income taxes to State B several years later. Instead of confronting the problem immediately, Applicant ignored the issue. The issue remains unresolved at the close of the record.

AG ¶ 20(g) applies with respect to Applicant's state income tax debt owed to State A. He is making timely and regular payments towards the tax debt to State A. However, the tax issue with State B remains unresolved.

The DOHA Appeal Board has held that failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Overall, Applicant did not meet his burden of proof to mitigate the concerns raised under financial considerations.



## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

I considered Applicant's honorable service in the United States Navy as well as his favorable employment with several DOD contractors. I considered the support he provides to his wife and family. With some financial counseling and planning, Applicant has sufficient financial resources to pay his delinquent debts and resolve the 2008 state income tax situation. He did not take sufficient action before the hearing to resolve his delinquent debts.

The security concerns raised under Financial Considerations are not mitigated.

### 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.h, 1.i:	For Applicant
Subparagraphs 1.b – 1:g:	Against Applicant

## **Conclusion**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Erin C. Hogan  
Administrative Judge