



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



In the matter of: )  
)  
) ISCR Case No. 23-00634  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2024

**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 May 30, 2023, Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Service (CAS issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations 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); Department of Defense (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 June 18, 2023 and requested a hearing. This case was assigned to me on October 24, 2023. A hearing was scheduled for November 29, 2023, and was heard on the scheduled date. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on 14 exhibits. (AEs A-N) and two witnesses (including himself). The transcript (Tr.) was received on December 8, 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 documentation of his filed federal tax returns, updates on the status of his allegedly delinquent state tax returns, and the payment status of his SOR ¶ 1.e debt. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant provided copies of his filed State A tax returns for tax years 2019 and 2020, IRS transcripts covering his filed federal tax returns for tax years 2018-2020 and IRS request receipts for tax years 2021-2022, a settlement offer and partial payment covering SOR creditor 1.e, a settlement offer and partial payment covering SOR creditor 1.g, a settlement offer from SOR creditor 1.j, an action plan for addressing Applicant's remaining SOR-listed debts, and a counseling services payment receipt. Applicant's post-hearing exhibits were accepted without objection as AEs O-U.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file his federal tax returns, as required, for tax years 2018 through 2022; (b) failed to file his State A tax returns for tax years 2018-2022; (c) failed to file his State B tax return for tax year 2018; and (d) accumulated 11 delinquent debts exceeding \$102,000. Allegedly, Applicant's tax filing for the years in issue remain unfiled, and the alleged delinquent debts remain unresolved and outstanding.

In Applicant's response to the SOR, he admitted most of the alleged failure-to-file allegations and delinquent debts with explanations. He denied the allegations covered by SOR ¶¶ 1.h and 1.k, claiming payment in full of SOR creditor ¶ 1.h and monthly payments to SOR creditor ¶ 1.k. He claimed some of the SOR debts (SOR ¶¶ 1.f-1.g, 1.j, and 1.m--1.n are business-related debts he personally guaranteed

### **Findings of Fact**

Applicant is a 59-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 January 1985 and divorced in January 1988. (GE 1; Tr. 39) He has two adult children from this marriage. (GE 1; Tr. 39) He remarried in January

1995, divorced in January 1997, and has one adult child from the marriage. (GE 1; Tr. 39-40) He earned a high school diploma in December 1981 and a certificate of completion of a truck-driving course in March 2020. (GE 1) Applicant reported no military service.

Since September 1992, Applicant has been employed as an over-the-road truck driver. (GE 1; Tr. 36-37) In his work, he leases his owned truck to his employer. (Tr. 36-37) Contemporaneously with his current employment, he and his son have operated their own trucking business. (GE 1) Between April 2020 and April 2021, Applicant and his son were self-employed with their own trucking business. (GE 1; Tr. 36-37)) Previously, he was self-employed in sailing ventures and car dealerships. (GE 1; Tr. 37-39) Applicant has never held a security clearance. (GE 1; Tr. 37)

### **Applicant's finances**

Between 2018 and 2022, Applicant was self-employed in various businesses that failed. (GE 1) He reported major losses and sold his businesses individually, netting between \$500,000 and \$600,000. (GE 1) With his proceeds, he invested in other business ventures "to shore them up." (GE 1)

Tax records document that Applicant did not timely file either his federal income tax returns, as required, for tax years 2018 through 2022 or his State A income tax returns for tax years 2018-2020 and 2022, as required. (GEs 1-2 and AEs C-K and P; Tr. 40) Tax records also confirm that Applicant did not timely file his State B income tax return for tax year 2018, as required. (GEs 1-2)

In his post-hearing submissions, Applicant documented his filing his federal income tax returns in December 2023 for tax years 2018-2020, but he has been unable to obtain verifying IRS transcripts for tax years 2021 and 2022. (AEs O and Q) Previously, the federal tax returns he provided for tax years 2018-2022 were neither signed nor filed. Before filing them, he was awaiting instructions from his tax preparer. (AEs C-G; Tr. 41-42)

As with his federal tax returns, Applicant's State A tax returns for tax years 2018-2020 and 2022 were not filed before his security clearance hearing in November 2023. (GEs 1-2; Tr. 27-28, 41-42) Among his post-hearing submissions was a documented State A tax filing (dated December 2023) for tax year 2019. His submitted October 2023 tax correspondence from his tax preparer referenced the prepared tax return for tax year 2019, but did not cover any of the other State A tax years covered in the SOR. (AE P) And, Applicant's signed 2019 State A tax return bears a signature date of December 2023. (AE P) Without more documentation from Applicant, State A tax returns for the missing 2018 and 2020-2022 tax years cannot be credited to Applicant as filed returns for these years in issue. Applicant attributed his late tax filings to procrastination. (Tr. 42)

Because Applicant failed to provide any documented evidence of filing his State B income tax return for tax year 2018, he cannot be credited with filing a State B tax

return for that tax year. Based on the evidence produced and developed by Applicant to date, Applicant's due 2018 tax return for State B remains unfiled.

Besides his federal and state tax filing lapses, Applicant accumulated 11 delinquent debts exceeding \$102,000. (GEs 1-4) To date, most of his accrued debts remain unaddressed and outstanding. (GEs 1-4) Currently, he has no documented payment plan or plans for addressing the bulk of these debts. (Tr. 42-43) Nor does he have any identified resources to pay his SOR creditors (either through payoffs or payment plans) Asked why some of the listed SOR debts have fallen off of his credit report, Applicant could provide no meaningful explanations for most of them. Although, he did acknowledge that several of these creditors (1.e., those with accounts covered by SOR ¶¶ 1.d-1.e, 1.g and 1.j) made contact with him in their efforts to resolve the debts. (Tr. 44-53)

While Applicant has paid off one creditor (SOR ¶ 1.h), accepted payment offers from two of the listed SOR creditors (SOR ¶¶ 1.e and 1.g) and made payments to them in accordance with the settlement terms with these creditors (AEs M and R-S), the remainder of his SOR-listed debts remain unaddressed. (Tr. 43-54) Applicant attributed his delinquent accounts to several sources: business losses, embezzlement by a former employee, and procrastination. (AE K; Tr. 33-34, 42-49)

Whether Applicant's delinquent accounts (exceeding \$102,000) are business-related, personal, or a combination of both is unclear. Because he accepts responsibility for all of the debts (reported as individually opened accounts in his credit reports), distinctions between business and personal debts make no material difference in assessing Applicant's payment obligations for the debts. Legally, he remains liable for all of the debts regardless of how they are classified. (GEs 1-4)

## **Endorsements**

Applicant's son and business partner endorsed him. (Tr. 60-63) Together, they transport military components for the DoD. (Tr. 61) Applicant's son described himself and Applicant as "fantastic truck drivers" and consistently available for whatever is timely needed by the DoD. (Tr. 60) He credited Applicant with trustworthiness and acceptance of responsibility for whatever obligations are imposed on persons who hold security clearances. (Tr. 64)

## **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 failure to timely file (a) his federal, and State A income tax returns for tax years 2018-2020 and 2022 and (b) his State B

income tax return for tax year 2018. Additional security concerns are raised over Applicant's accumulation of delinquent debts (11 in all) exceeding \$102,000.

### **Financial concerns**

Applicant's multiple tax-filing lapses warrant the application of one of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶ 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," applies to Applicant's situation.

Applicant's admitted tax-filing lapses, albeit accompanied by explanations of his updated filing of his tax returns, 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 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 failures and 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); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Without any evidence of IRS and state approved extensions of time for those federal and state tax returns Applicant filed in December 2023 for the tax years in issue, or good cause demonstrated for his untimely filing of tax returns for tax years 2018-2020 and 2022, 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).

Addressing Applicant's delinquent debts, all of the debts listed in the SOR are supported by Applicant's credit reports in evidence. Credit reports are business records that generally are sufficient to meet the Government's evidentiary obligations under Directive ¶ E3.1.14 for pertinent allegations (financial in this case). See ISCR Case No. 08-12184 at 5 (App. Bd. Jan 7, 2010) Of the listed SOR debts in this case, Applicant has resolved only three debts to date: his payoff of SOR creditor ¶ 1.h and his payment

plans in place with SOR creditors ¶¶ 1.g and 1.j. Applicant's commitments to address his remaining SOR debts, while encouraging, represent no more than inchoate promises to resolve his still outstanding accounts and are not viable substitutes for a track record of paying debts in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sep 26, 2019)

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of multiple tax-filing lapses and debt delinquencies 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 payment responsibilities in a timely way over the course of many years. Overall trustworthiness, reliability, and good judgment have not been established. 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 stability with 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 holding a security clearance 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.d, 1.f, and 1.i-1.n:	Against Applicant
Subparagraphs 1.e and 1.g-1.h:	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