



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



In the matter of: )  
)  
) ISCR Case No. 23-01311  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Troy Nussbaum, Esq., Department Counsel  
For Applicant: *Pro se*

03/14/2024

**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 concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On August 17, 2023, the Defense Counterintelligence and Security Agency (DCSA) Central Adjudications Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline 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 (undated) and requested a hearing. This case was assigned to me on January 4, 2024. A hearing was scheduled for February 2, 2024, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (herself) and no exhibits. The transcript (Tr.) was received on February 9, 2024.

### **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 updates on the status of his debts and any settlement arrangements he was able to make with his creditors. For good cause shown, Applicant was granted 30 days to supplement the record. Department Counsel was afforded three days to respond. (Tr. 84) Within the time permitted, Applicant supplemented the record with a documented excel spreadsheet, a credit repair contract, a divorce decree covering his divorce from his first wife, and a payoff of his SOR ¶ 1.h debt. Applicant's submissions were admitted without objections as AEs A-D.

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated 20 delinquent consumer debts exceeding \$48,000. Allegedly, these delinquent accounts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted most of the debts with explanations. Accepting personal responsibility for all of his admitted debts, he denied the alleged debts covered by SOR ¶¶ 1.f, 1.h, 1.q, and 1.t, claiming uncertainty over whether the debts belonged to him.

### **Findings of Fact**

Applicant is a 31-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 2017 and divorced in March 2020. (GE 1; Tr. 20, 24) He has two biological children: one from his first marriage (age 5) and another from a prior relationship (age 8). (GE 1; Tr. 24-26) Both children reside with their respective mothers and receive monthly child support from Applicant. (Tr. 25-29) Applicant remarried in June 2022 and separated in 2023. (GE 1; Tr. Tr. 33) His current wife has three biological children of her own from a previous marriage and three adopted children, for whom Applicant has no legal responsibility for their care and upbringing. (GE 1; 30-31) Applicant and his current wife are living apart and anticipate their marriage will ultimately end in divorce. (GE 1; Tr. 41)

Applicant earned an associate's degree in May 2014 and a bachelor's degree in May 2016. (GE 1; Tr. 22-23) He reported no military service. Since April 2022, Applicant has been employed as a material coordinator. (GE 1; Tr. 34) Previously, he worked for other employers in various jobs. (GE 1) He reported brief unemployment in 2021. (GE 1) Applicant has never held a security clearance. (GE 1)

### **Applicant's finances**

Between 2017 and 2022, Applicant accumulated 20 delinquent debts exceeding \$48,000. (GEs 1-5) He attributed his debt delinquencies to overspending during his first marriage, citing expensive cars and housing. (GE 2; Tr. 44) In his words, his debts just "avalanched." (Tr. 42) Under the terms of his March 2020 divorce decree, Applicant and his wife were each assigned respective responsibilities for specific marital debts. (GE 2 and AE C) The debts assigned to Applicant were considerable and limited his ability to resolve them in a timely way. (GEs 1-2)

Acknowledging the debts assigned to him by his divorce decree, Applicant accepts full responsibility for his debts. His assigned debts are comprised of the following: SOR ¶¶ 1.a (a consumer account for \$7,591); 1.b (a revolving credit card account for \$5,977); 1.c (a credit card account for \$5,462); 1.d (a credit card account for \$5,416); 1.e (a personal loan for \$5,175); 1.f (a digital retail account for \$3,879); 1.g (a credit card account for \$2,509); 1.h (a an auto loan for \$2,100); 1.i (a credit card account for \$1,514); 1.j (a credit card account for \$1,395); 1.k (a credit card account for \$1,124); 1.l-1-p and 1.r (unknown family debts assigned to him from his divorce exceeding \$1,300); 1.q (a cell phone account for \$161); 1.s (child support arrears approximating \$4,096); and 1.t (a utility account for \$54). (GEs 1-5; Tr. 56-71)

Since his finalized divorce from his first wife in 2020, Applicant has addressed only two of the delinquent debts covered in the SOR. Based on his testimony and payment documentation, he is credited with paying off the automotive debt covered by SOR ¶ 1.h. (AE D; Tr. 42) His recent engagement of a credit repair service, while encouraging, has not produced any tangible results in resolving his delinquent accounts.

Applicant's monthly child support obligations cover both of his biological sons. (GE 2; Tr. 25-26) With respect to the mother of his son from a prior relationship, he has a standard custody agreement under which he has bi-weekly monthly child support obligations of \$200. (Tr. 27) Applicant's ordered monthly child support obligations to the child of his first marriage run \$400 a month for current support and include designated amounts applied to arrears. (GE 2 and AE C; Tr. 29) Applicant is credited with being in compliance with his state's court-ordered withholding of calculated owed child support (both current and arrears) from his bi-weekly pay-check. (GE 2 and AE C; Tr. 29)

Applicant currently earns \$66,000 from his work. (GE 3; Tr. 34) His monthly gross approximates \$5,425. (GE 3; Tr. 49) After deductions, (inclusive of his monthly child support withholding) his net monthly take-home pay is \$2,968. (Tr. 51, 55)

According to Applicant, he and his wife have lived well below their means. (Tr. 46) Currently, his reported monthly (post-separation) living expenses total around \$2,500. (GE 3; Tr. 55-56) Matching his net-monthly take-home pay with his monthly expenses leaves him with a net monthly remainder of approximately \$450. (Tr. 56) Such a small remainder leaves him with little discretionary funds to make any serious inroads into his debts. (Tr. 78-79) Creditors that he has talked to have already charged off most of his SOR-listed debts and have not been willing to open their books to negotiate settlement payoffs. (Tr. 83)

### **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 20 delinquent debts, exceeding \$48,000, that for the most part have not been resolved. 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."

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 cited both overspending during his first marriage and limited post-divorce resources for reasons he has been unable to make more progress in addressing his delinquent accounts. With the exception of the debts covered by SOR ¶¶ 1.h and 1.s, which are favorably resolved, he has made no documented progress to date in resolving his listed SOR debts. While his recent engagement of a credit repair service to help him with his debts is encouraging, his debts at this time remain for the most part unresolved and outstanding. None of the potentially available mitigating conditions apply to his situation.

Well-intentioned promises, aided by creditor repair services, while encouraging, cannot be substituted for a voluntary, good faith track record of payments. Based on the evidence presented, Applicant is unable to demonstrate a sufficient tangible payment history of actual debt reduction to satisfy Appeal Board guidance associated with the

good-faith and responsible payment requirements for applicants seeking access to classified information.

### **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. Applicant's problems in managing his finances have been longstanding and slow to stabilize. With over \$40,000 worth of delinquent accounts still unresolved and only recently addressed, he is faced with considerable challenges in resolving his open accounts and restoring control of his finances. Without a better track record of good-faith, responsible payment initiatives pre-dating the issuance of the SOR, his efforts to date fall short of the level of financial responsibility required to demonstrate responsible regain control of her finances.

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.g, 1-r, and 1.t:	Against Applicant
Subparagraphs 1.h and 1.s:	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 granted.

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Roger C. Wesley  
Administrative Judge