



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



In the matter of: \_\_\_\_\_ )  
 )  
 ) ISCR Case No. 23-01565  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Mark Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

09/11/2024  
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**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 Case**

On October 5, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) 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); 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 November 28, 2023, and requested a hearing. This case was assigned to me on June 25, 2024. A hearing was scheduled for July 30, 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) that were admitted without objection. Applicant relied on one witness (himself) and one exhibit that was admitted without objection. (AE A). The transcript (Tr.) was received on August 12, 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 updated tax payment information, deed in lieu of foreclosure, and military records. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded seven days to respond.

Within the time permitted, Applicant supplemented the record with an Internal Revenue Service (IRS) billing summary covering tax year 2017, mortgage assistance correspondence, a mortgage assistance application, and a deed in lieu of foreclosure. Applicant's post-hearing submissions were admitted without objection or comment as AEs B-E.

### **Summary of Pleadings**

Under Guideline F of the SOR, Applicant allegedly accumulated six delinquent consumer debts exceeding \$65,000 and an IRS tax debt of \$1,248 for tax year 2017. Allegedly, his delinquent debts remain unresolved and outstanding.

Under Guideline E, Applicant allegedly (a) incurred multiple military disciplinary punishments between March 2007 and December 2021; (b) received a general discharge from the U.S. Navy in September 2010 for a cited alcohol rehabilitation failure; (c) was fired by a previous civilian employer in April 2018 for threatening to beat up his supervisor; and (d) was arrested and charged on four different occasions for assorted civilian offenses. Allegedly, these offenses represent a pattern of alcohol-related and other unlawful incidents.

In his response to the SOR, Applicant admitted some of the allegations and denied others covered by Guideline F. He admitted the alleged debts covered by SOR ¶¶ 1.a, 1.c, and 1.e-1.,q, while denying the allegations covered by SOR ¶¶ 1.b and 1.d.

Addressing the allegations covered by Guideline E, Applicant admitted most of them, denying only the allegations covered by SOR ¶ 2.h. He added explanations to his responses to the allegations covered by Guidelines F and E and attached a copy of a personal statement (admitted as AE A).

## Findings of Fact

Applicant is a 42-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 April 2005 and has four children from this marriage. (GE 1; Tr. 29, 48) He and his wife have lived separately since May 2023 and have a pending divorce. (Tr. 25, 66) He earned a bachelor degree in October 2010. (GE 1) Applicant enlisted in the Navy in May 2004 and served six years of active duty. (GE 1) He received a general discharge under other honorable conditions in September 2020. (GE 1; Tr. 29-30, 50-51)

Since May 2022, Applicant has been employed as a senior estimator for his current employer (with a break in service between 2022 and 2023). (GE 1 and AE A; Tr. 30) Previously, he worked for other employers in various jobs. (GE 1) He does not currently hold a security clearance. (GE 1; Tr. 31)

### Applicant's finances

Between 2010 and 2014, Applicant accumulated six delinquent consumer accounts exceeding \$65,000 and delinquent federal taxes for tax year 2017 in the amount of \$1,248. (GEs 2-4; Tr. 31-43) The SOR debts are listed as follows: SOR ¶¶ 1.a (an individual credit card debt of \$3,400); 1.b (an individual utility debt of \$130); 1.c (a deficiency balance on a joint mortgage loan account of \$55,212), following a voluntarily returned deed in lieu of foreclosure; 1.d (an individual credit card account for \$130); 1.e (an individual credit card account for \$1,809); 1.f (an individual medical debt of \$119); and 1.g (an individual delinquent federal tax debt of \$1,248 covering tax year 2017).

Applicant attributed his debt delinquencies to financial problems he experienced after he enlisted in the Navy in May 2004. (Tr. 31) His efforts to enlist the services of a debt consolidation firm in late 2022 were unsuccessful. (Tr.69) While his tax debt owed to the IRS for tax year 2017 was satisfied through withholding of an overpayment applied from tax year 2023, his remaining consumer and medical debts have not been addressed to date and remain unresolved and unsatisfied. (GEs 3-5; Tr. 32-33, 42-43) Applicant offered no concrete plans to address his remaining debt delinquencies.

Applicant nets around \$9,200 a month (a figure that fluctuates yearly). (Tr. 62-64) His monthly expenses consist of childcare (estimated at \$3,600); spousal care (estimated at \$1,500), and other child and spousal support expenses totaling \$6,000. (Tr. 66) He estimated his net monthly remainder to be in the \$1,000 range. (Tr. 69) He placed no estimate on his own monthly expenses associated with his life at home with his parents. (Tr. 66)

## **Applicant's history of criminal and civil offenses and rules violations**

Between 2003 and December 2021, Applicant was involved in multiple criminal and civil offenses (some alcohol-related) and rules violations. As a young adult, he was involved in two motor vehicle violations and theft of property. Records document that in 2003, he was arrested and charged with a theft of property (value over \$5, less than \$500) offense, to which he pled no contest and received a deferred disposition. (GE 2)

In reported incidents arising in 2005 and 2006, respectively, Applicant was charged with operating a vehicle under the influence of an intoxicant (2005) and driving on an invalid license (2006), respectively. (GE 2) In both cases, the charges were dropped. (GE 2; Tr. 58-59)

In February 2007, Applicant was arrested and charged with operating a vehicle under the influence of an intoxicant, for which he was found guilty as charged. (GE 2; Tr. 58-59) Based on the facts arising out of the same incident, he was found guilty at a convened Captain's Mast in March 2007 and awarded non-judicial punishment (NJP) for violating UCMJ Article 112 (drunk on duty). (GE 2; Tr. 58-59) His awarded punishment consisted of reduction in rank.

Applicant was involved in another alcohol-related incident in February 2008, for which he was found guilty at a convened Captain's Mast and awarded NJP for violating USCMJ Article 92 (violating a lawful general order) and Article 134 (Disorderly Conduct, Drunkenness). For these determined violations, he was awarded reduction in rank (suspended) and placed on restriction for 60 days. The incident arose out of his being banned from boarding a boat due to intoxication and engaging in ensuing fighting with military police. Based on his cited Alcohol Rehabilitation failure, he was discharged from the Navy in September 2010 and issued a general discharge under less than honorable conditions. (GEs 1-2; Tr. 29-30, 50-51)

Records document two other incidents between 2018 and 2021 involving Applicant. In 2018, he was fired for threatening to beat up his supervisor, who had charged Applicant with mismanaging a project under his supervisor's control. (GEs 1-2; 2; Tr. 47-50) And, in December 2021, Applicant received a five-day suspension without pay and a written counseling from his government contractor employer for leaving his assigned base) on numerous occasions (no less than 15 times) in violation of established base procedures (no less than 15 times) without the knowledge or approval of his program management supervisors, GE 2; Tr. 45-47)

## **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, and 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 or 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 ¶ 12(b).

### **Analysis**

Security concerns are raised over Applicant’s accumulation of delinquent debts. Additional concerns are raised over his history of civilian and military offenses (some alcohol-related) and employment termination issues.

### **Financial Considerations**

Applicant’s accumulation of delinquent debts over an extended period warrants the application of three disqualifying (DCs) under the financial considerations guideline (DC). 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.

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 financial 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).

In Applicant’s case, his debt delinquencies are attributable to financial problems he experienced after he enlisted in the Navy in May 2004. Still, he retained enough income from his employment to make at least some monthly progress in addressing his debt delinquencies.

Applicable mitigating conditions (MC) include 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 circumstance” and 20 (d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.”

To date, Applicant has failed to take any concerted measures to pay off or pay down his still unresolved and outstanding debts. While he was credited with avoiding a mortgagee foreclosure with his accepted deed in lieu of foreclosure, he continues to be irresponsible for the still outstanding deficiency balance. And the IRS tax debt for taxes owed for tax year 2017 was satisfied only through involuntary garnishment.

Satisfaction of a debt (inclusive of tax debts) through the involuntary establishment of a creditor’s garnishment or withholding can never be equated with a good-faith initiation of repayment by the debtor. See ISCR Case No. 08-06558 at 5 (App. Bd. Sep. 21, 2009). Overall, his debt management initiatives have been insufficient to meet his evidentiary burdens of demonstrating the responsible requirements of MC ¶ 20(b) for managing his finances, or to warrant the application of any of the remaining mitigating conditions.

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 not able to demonstrate a sufficient tangible track record of actual debt reduction to satisfy Appeal Board guidance associated with the responsible and good-faith payment requirements of MCs ¶¶ 20(b) and 20(d).

### **Personal conduct concerns**

Additional security concerns are raised over Applicant’s multiple years of civil and criminal violations (some alcohol-related) spanning the years of 2003 through 2021. His compiled record civil (inclusive of employment discharges and Navy NJP) and criminal incidents (some alcohol-related) raise considerable concerns about Applicant’s trustworthiness, reliability, and judgment.

On the strength of the evidence documented in the record, one disqualifying condition (DC) of the personal conduct guideline apply. DC ¶ 16(d),

credible adverse information that is not explicitly covered by any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. this includes, but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations.



applies to Applicant's situation.

Availability of mitigating conditions to Applicant is very limited. His multiple judgment lapses associated with his multiple military and civilian offenses over an extended period (i.e., between 2003 and 2021) are troubling and continue to raise questions about his recurrence risks. Without more evidence of rehabilitative measures (to include counseling and more sustained efforts to avert recurrent incidents), it is too soon to make safe predictive judgments about Applicant's ability to avoid similar judgment lapses in the future. Based on Applicant's track record to date, none of the potentially available mitigating conditions are available to him.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances and criminal and civilian offense history are fully compatible with minimum standards for holding a clearance. Taking into account Applicant's credited defense contributions, his cumulative efforts to date to stabilize his finances and restore his judgment, reliability, and trustworthiness to acceptable levels compatible with holding a security clearance are not enough to satisfy minimum standards for holding a security clearance.

Overall, Applicant has demonstrated insufficient initiatives in addressing his accumulated delinquent debts and restoring his judgment and trustworthiness to acceptable levels for persons afforded access to classified information. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980).

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.g: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.f and 2.i: Against Applicant

Subparagraphs 2.g-2.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