



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



In the matter of:)
)
 _____) ISCR Case No. 24-01103
)
 Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Department Counsel
For Applicant: *Pro se*

01/08/2025

Decision

WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, 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 August 27, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA 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 on September 19, 2024, and requested that his case be resolved on the written record without a hearing. Applicant received the FORM on October 31, 2024, and did not respond to the FORM with any post-FORM submissions. This case was assigned to me on December 23, 2024. The Government's case consisted of five exhibits and were admitted without objection as Items 1-5.

Summary of Pleadings

Under Guideline F, Applicant allegedly failed to file his federal and state income tax returns as required for tax years 2013 through 2023. Allegedly, the Internal Revenue Service (IRS) filed substitute returns on his behalf for tax years 2014 and 2018 through 2021, but the remaining tax returns remain unfiled, and Applicant allegedly owes approximately \$123,416 in back taxes, interest, and penalties.

In Applicant's initial response to the SOR, he admitted each of the allegations with explanations and clarifications. He claimed he is currently in the process of engaging a tax attorney through a tax relief company to file his tax returns for the years in issue. He also claimed to be in the process of negotiating a payment plan with the respective tax authorities within the ensuing 30 to 60 days. (Item 2) In a follow-up response to the SOR, Applicant claimed that he filed his outstanding tax returns with both the IRS and state revenue department of his state of residence. He provided no documentary support to corroborate his claims.

Findings of Fact

Applicant is a 71-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 July 1980 and has two adult children from his marriage. (Items 3-4) He earned a bachelor's degree in June 1975 and a master's degree in May 1977 from the same respected university. (Items 3-4) He earned another master's degree in June 1988 from another respected university. Applicant reported no military service. (Items 3-4) Since March 2023, Applicant has been employed by his current employer as a business development lead. (Item 3) Previously, he worked for other employers in various jobs. (items 3-4) He reported brief periods of unemployment between November 2016 and March 2023. (Items 3-4) Applicant has held a security clearance since June 2003. (Items 3-4)

Applicant's finances

Tax records document that Applicant did not file his federal and state income tax returns, as required, for tax years 2013 through 2023 . (GEs 3-5) Applicant provided no documentation of steps he has taken to file his tax returns for the years in issue. He attributed his tax filing failures to a lack of sufficient funds to satisfy owed taxes for the

tax years in issue. (items 3-4) Tax records confirm that the IRS filed substitute tax returns on Applicant's behalf for tax years 2014 and 2018 through 2021. Applicant's remaining federal tax returns for tax years 2015-2017 and his state tax returns for the years in issue remain unfiled and unresolved according to reported tax records (Item 5). Applicant's claims that he has since filed his federal and state income tax returns for tax years 2014, 2020, and 2021 are neither documented nor corroborated by other reliable means. (Items 2 and 5)

Additionally, Applicant remains indebted to the federal government for delinquent taxes in the approximate amount of \$123,416. (Items 3-4) And, he remains indebted to his state of residence for delinquent taxes in the amount of \$27,799. (Items 3-5) Applicant provided no documentation to corroborate his assurances.

Applicant reported household income of around \$300,000 and provided no detailed explanations of why he could not afford to pay his taxes. (Item 4) His reported cash shortfalls are not explained with sufficient specificity to support his claims of inability to meet his tax-filing and payment obligations. With the pre-tax annual income available to him, he could be reasonably expected to not only file his federal and state tax returns, as required, for the years in issue, but to set aside enough funds to ensure his ability to meet his tax payment obligations when they came due.

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 (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 [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 his federal and state income tax returns for tax years 2013 through 2023, as required. His multiple tax-filing lapses raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly.

Financial concerns

Applicant’s multiple federal and state income tax-filing lapses for tax years 2013-2023 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,” apply to Applicant’s situation.

Applicant’s admitted tax-filing failures require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). His admitted tax-filing failures are fully documented and create judgment

issues 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 Applicant's tax-filing lapses, 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); and ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 5, 2002).

Without any documented evidence of Applicant's timely resolving his federal and state tax-filing failures, none of the potentially available mitigating conditions are available to him. In the past, the Appeal Board has imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to tax-filing lapses or delinquent taxes and other 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).

Applicant's expressed assurances of his filing his tax returns for tax years 2014, 2020, and 2021 and commitments to addressing any owed taxes, while encouraging, lack the needed documentation to corroborate his assurances and atone for his past tax-filing failures. Expressed financial commitments without proper documentation represent no more than promises to resolve his still outstanding tax-filing failures and are not viable substitutes for a track record of filing income tax returns in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019).

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of tax filing failures and owed delinquent federal and state taxes is 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 timely file his federal and state income tax returns. 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 documented 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 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.b:

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.

Roger C. Wesley
Administrative Judge