



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



In the matter of:)
)
 _____) ISCR Case No. 23-02570
)
 Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/14/2025

Decision

WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate financial consideration and criminal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On July 29, 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 and criminal 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 August 13, 2024, and requested that his case be resolved on the written record without a hearing. Applicant received the FORM on October 22, 2024, and did not respond to the FORM with any post-FORM submissions. This case was assigned to me on November 26, 2024. The Government's case consisted of 10 exhibits and were admitted without objection as Items 1-10.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his federal income tax returns for tax years 2018 and 2019, as required file his federal income tax returns for tax years 2020 and 2021 until July 2023; (b) is indebted to the Federal Government for delinquent taxes in the approximate amount of \$1,793 for tax year 2020; (c) failed to file his state income tax returns for at least tax years 2018 and 2019, as required; (d) did not file his state income tax returns for tax years 2020 and 2021 until July 23; and (e) accumulated 12 delinquent debts exceeding \$31,000. Allegedly, Applicant's delinquent income tax filings and accumulated delinquent taxes and debts have not been resolved and remain outstanding.

Under Guideline J, Applicant allegedly incurred (a) multiple driving on a suspended license charges between January 2015 and February 2023 and (b) a driving under the influence (DUI) charge (BAC .08% or higher) and driving on a suspended license in February 2018, to which he pled no contest to the DUI charge. Allegedly, Applicant's multiple charges represent pattern criminal conduct.

In Applicant's response to the SOR, he admitted most of the allegations (denying only the allegations covered by SOR ¶ 1.c). He claimed his delinquent taxes owed for tax year 2020 was subjected to a court garnishment order, which was resulted in his being garnished for \$1,918.

Findings of Fact

Applicant is a 35-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 February 2014 and has three children (ages 16, 13, and 9) from this marriage. (Item 3) He earned a high school diploma in June 2007. Applicant reported no military service. (Item 3)

Since March 2023, Applicant has worked for his current employer as an aircraft structural mechanic, (Items 3-4) Previously, he worked for other employers in various jobs. He reported multiple periods of unemployment between June 2012 and March 2022. (Items 3-4) Applicant was previously denied a security clearance in April 2019 and is currently sponsored for a security clearance by present employer. (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 2018 and 2019. (GE 4) And, for tax years 2020 and 2021, he did not file his federal and state income tax returns until July 2023. Tax records further document that Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$1,793 for tax year 2020. (Item 4) Applicant attributed his tax filing lapses and delinquent tax debt to his wife's failure to file their joint returns and take care of any taxes owed. He attributed his own delinquent debt accumulations to his cited multiple periods of unemployment. (Items 4-5)

Between 2014 and 2022, Applicant accumulated 12 delinquent debts exceeding \$31,000. (Items 5-9) These debts are covered in the SOR as follows: ¶¶ 1.f for \$770; 1.g for \$605; 1.h for \$3,406; 1.i for \$11,674; 1.j for \$773; 1.k for \$2,760; 1.l for \$3,160; 1.m for \$2,456; 1.n for \$634; 1.o for \$121; 1.p for \$113; and 1.q for \$6,263 for the balance due on a repossessed vehicle. (Items 6-9) . (Items 5-6) To date, Applicant has made no documented payments or entered into any documented payment plans on these SOR debts. Nor has he provided any credible explanations of recurrent failures to file his federal and state tax returns, as required for the tax years in issue.

Applicant's driving-related criminal incidents

FBI records identify multiple violations of safe driving laws in applicant's state of residence. (items 3-4 and 10) Between 2015 and 2023, he was charged with driving on a suspended license on four separate occasions. In one of the reported incidents (in February 2018), he was charged with Driving Under the Influence (DUI) of alcohol with a registered blood alcohol content (BAC) of .08% or higher. (Item 10) He pled guilty to the driving on a suspended license charges in two of the incidents (i.e., the charges covered by SOR ¶¶ 2.a and 2.b). And, he pled no contest to the DUI charges covered by SOR ¶ 2.c. (Item 10) These arrests, considered together, adversely impacted his finances. (Item 4)

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.

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 30.

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 (a) to timely file his federal and state tax returns for tax years 2018 and 2019, as required and (b) his failure to file his federal and state tax returns for tax years 2020 and 2021 until July 2023; and his accumulation of delinquent tax and consumer debts raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly. Additional security concerns are raised over Applicant's multiple driving on a suspended license and DUI arrests and charges.

Financial concerns

Applicant's multiple federal and state tax-filing lapses for tax years 2016-2019 and owed taxes for the tax years in issue, his accumulated delinquent consumer debts, and his repeated misuse of his government-issued travel cards in 2017 and 2019, respectively, warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines. 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.

Applicant's admitted tax-filing failures and delinquent accumulations 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 and debt delinquencies, 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 of an applicant's tax-filing failures and accumulated debt delinquencies are critical to an assessment of the 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. 14-00221 at 2-5 (App. Bd. June 29, 2016); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); 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 and his individual debt delinquencies with payoffs and payment plans, 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 back taxes 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).

Criminal conduct concerns

Security concerns are also raised over Applicant's multiple arrests and charges alcohol-related charges emanating from driving on a suspended license and DUI offenses. Applicable under the criminal conduct guideline is DC ¶ 31(b), "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted." Applicant's multiple instances of driving on a suspended license, along with his 2018 DUI charge, and dispositions attributable to him on these charges reflect serious breaches of good judgment and respect for the traffic laws in force in his state of residence.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of tax filing failures, accumulated delinquent tax and other debts accounts, and multiple criminal charges and convictions 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 timely file his federal and state income tax returns, address his tax and consumer debts in a timely way, and avoid his multiple instances of traffic violations. 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 and criminal conduct 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 and criminal 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.q:	Against Applicant
Guideline J: (CRIMINAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	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