



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00338

Appearances

For Government: Jenny Bayer, Esq, Department Counsel
For Applicant: *Pro se*

03/19/2025

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 March 18, 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 March 25, 2025, and requested that his case be resolved on the written record without a hearing. Applicant received the Fie of Relevant Material (FORM) on September 10, 2024, and elected not to respond to the FORM. This case was assigned to me on March 3, 2025. The Government's case consisted of 11 exhibits that were admitted without objection as Items 1-11.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 12 delinquent consumer debts exceeding \$43,000, delinquent federal taxes owed in excess of \$30,000 for tax years 2013, 2016, and 2019 through 2021, and delinquent state taxes owed in excess of \$887 for tax years 2016, 2020, and 2021. Allegedly, Applicant failed to file his federal income tax returns for tax years 2014-2018 and 2020 and 2023, as required, and his state income tax returns for tax years 2012-2015 and 2019 and 2022, as required. Allegedly, Applicant's delinquent debts and delinquent tax filings have not been resolved and remain outstanding.

In Applicant's response to the SOR, he admitted the allegations with explanations and clarifications. He claimed he included all of his delinquent debts in a filed bankruptcy. He claimed that he has since filled his federal and state tax returns for the years in issue and incorporated his delinquent tax debts in a payment program. He provided no documented attachments.

Findings of Fact

Applicant is a 63-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 1980 and divorced in 1987. (Items 3 and 11) He has two adult children from this marriage (ages 42 and 43). He remarried in 1988 and divorced in 1995 (Items 3 and 11) He has one adult child (age 34) from this marriage.(Items 3 and 11) He remarried for the second time in February 2009 and has two adult stepchildren from this marriage. (Items 3 and 11)

Applicant raised and supported his three children by himself since the passing of their mothers. (Items 3 and 7) Applicant earned a general education diploma (GD) and attended college classes between 1978 and 1979 without earning a degree or diploma. (Item 11) He reported no military service. (Item 3)

Since March 2022, Applicant has been employed by his current employer as a senior developer. (Item 3) Previously, he was self-employed as a developer and architect. He reported post-Covid-19 unemployment. He is sponsored for a security clearance by his current employer but has never held a security clearance or public trust position.

Applicant's Finances

Applicant experienced periods of recurrent unemployment following the Covid-19 pandemic and struggled with his debts and overall financial responsibilities. Since 2020, Applicant accumulated 12 delinquent consumer debts exceeding \$42,000. Applicant's accumulated consumer debt delinquencies are as follows: 1.a (credit card debt for \$7,991); 1.b (a consumer debt for \$5,988); 1.c (a credit card debt for \$5,869); 1.d (a credit card det for \$5,448); 1.e (a credit card debt for \$2,944); 1.f (a credit card debt for \$2,951); 1.g (a consumer debt for \$1,937); 1.h (a credit card debt for \$1,624); 1.i (a credit card debt for \$1,620); 1.j (a consumer debt for \$1,562); 1.k a consumer debt for \$1,364); 1.l (a consumer debt for \$987); 1.m (a credit card debt for \$816); 1.n (a credit card debt for \$770); 1.o (a credit card debt \$732); and 1.p (a consumer debt for \$427). (Items 5-6 and 9-11) Applicant attributed all of his accrued credit card and other consumer debts to post-Covid-19 pandemic employment difficulties associated with the travel industry. (item 9)

Additionally, Applicant is of record in failing to file his (a) federal income tax returns for tax years 2012 through 2020, as required and (b) his state income tax returns for tax years 2012 through 2020, as required. Documented delinquent federal income taxes owed for these tax years are as follows: for tax year 2013, the amount owed is \$762, and for tax years 2016, 2019-2020, the totaled sum owing is \$29,955. (Items 9-11) And, he is of record in owing \$887 in delinquent income taxes to his state of residence for tax years 2016 through 2021, as required. While he did not cite any specific reasons for his tax-filing lapses and tax debt accumulations, he acknowledged his problems with his tax filing and accrued income tax debts. (Applicant's response and Item 9)

To address his accrued credit card and other delinquent accounts, Applicant petitioned for Chapter 7 bankruptcy relief in July 1991. (Items 7-8) He received a discharge in bankruptcy in October 1991. (Items 7-8) Bankruptcy records document Applicant's petitioning for Chapter 7 bankruptcy relief a second time in December 2002. (Item 8) Reportedly, this bankruptcy petition was dismissed. Bankruptcy records further confirm that Applicant petitioned for Chapter 7 relief for a third time in in October 2005 and was discharged in February 2006 .(Item 8) Both of his completed bankruptcies appear to be no-asset cases. Neither bankruptcy discharge appears to include any of the debts listed in the SOR.

To date, Applicant has made no documented payment progress in addressing his tax and consumer debt delinquencies and tax filing lapses. Any subsequent bankruptcy petition he may have filed since his last Chapter discharge in 2006 is neither documented nor addressed by Applicant with any specificity. Any installment agreements he may have arranged with the Internal Revenue Service (IRS) is not documented and cannot be assumed without corroboration. In an updated personal subject interview (PSI), Applicant told the assigned investigator from the Office of Personnel Management (OPM) that he put off filing his federal and state tax returns for the years in issue because he fell behind and could not find the time to complete them during the post-Covid-19 pandemic. (Item 11) While he volunteered his owing late

federal taxes, he acknowledged his consumer debt delinquencies only after being confronted by the OPM investigator. (Item 11)

The developed record is unclear as to how much monthly income Applicant currently earns. In the personal financial statement, he provided the OPM investigator in his PSI, he reported a net monthly income of \$7,724, monthly expenses of \$5,000, and a net monthly remainder of \$1,233. (Item 11) His cited \$400 monthly payments covered by his cited IRS installment agreement were neither identified with specificity, provided as attachments, nor otherwise corroborated.

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.” *Egan*. 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 AGs 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, Feb. 20, 1960, § 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 accumulation of 12 delinquent consumer debts exceeding \$43,000, federal tax debts exceeding \$30,000, and timely tax filing failures that raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly. These concerns are addressed below.

Financial concerns

Applicant’s accumulated delinquent debts warrant the application of four of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), “inability to satisfy debts”; 19(b), “unwillingness to satisfy debts regardless of the ability to do so”; 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. His admitted debt delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006).

Applicant’s admitted debt delinquencies are fully documented and raise judgment issues over the management of her 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 debt delinquencies and tax filing lapses (SORs ¶¶ 1.a-1.x) 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 documented evidence of Applicant's favorably resolving his current debt delinquencies and timely tax filing failures, or demonstrated good cause for why these debts and timely tax filing failures have not been timely resolved to date, potentially available mitigating conditions are limited. Only mitigating condition (MC) 19(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 circumstances," has limited application. His reported periodic unemployment entitles him to only partial application of MC ¶ 19(b) without more information on the current status of her debts and his failure to timely resolve his debt delinquencies and timely tax filings, as required by law.

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 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). Afforded opportunities to do so, Applicant has provided insufficient information on the status of his debts and federal and state tax filings..

Applicant's claimed payment agreements with the IRS and his listed SOR creditors, while encouraging if validated, are not accompanied by any documented payment arrangements and filed tax returns and cannot perforce be accorded much probative weight. Applicant's expressed commitments to address his debts and stabilize his finances, while welcomed, without documented validation, represent no more than promises to resolve his still outstanding consumer and tax debts 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. Sept. 26, 2019)

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of accumulated delinquent debts (both consumer and taxes) and tax-filing lapses 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 debts and file his federal and state income tax returns in a timely way. 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:x:

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