



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02657

Appearances

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

05/05/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant failed to mitigate security concerns raised under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On April 28, 2023, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP). (Government Exhibit (GE) 1) On February 21, 2024, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; 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.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a

security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted or denied. Specifically, the SOR set forth security concerns arising under Guideline F, Financial Considerations. On March 1, 2024, Applicant responded to the SOR and requested a hearing before an administrative judge. On April 30, 2024, Department Counsel was ready to proceed. The case was assigned to me on November 6, 2024. On December 30, 2025, DOHA issued a notice of hearing, setting the hearing for February 6, 2025. The hearing was held as scheduled via video-teleconference.

During the hearing, Department Counsel offered five exhibits, Government Exhibits (GE) 1 - 5, which were admitted without objection. Applicant did not offer any exhibits. The record was held open until February 20, 2025, to allow Applicant the opportunity to submit additional exhibits. He did not submit additional exhibits. On February 19, 2025, DOHA received a transcript (Tr.) of the hearing. The record closed on that date.

Some details were excluded from this decision to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admits all of the SOR allegations. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 45-year-old employee of a defense contractor seeking to obtain a security clearance. He has worked for his current employer since October 2011. This is a reinvestigation of his security clearance. He has no military service. He earned a high school diploma and completed an apprenticeship program. He has been married three times. Four children were born during his first marriage, ages 27, 20, 18 and 16. He has four stepchildren ages 22, 15, 7 and 6. He and his current wife have been married since 2015. (Tr. 18-20, 56; GE 1)

Applicant submitted an e-QIP on January 27, 2024. A subsequent background investigation revealed that he had approximately four delinquent consumer debts totaling approximately \$2,351; he failed to file his Federal and state income tax returns for several years, and owed approximately \$18,999 to the Internal Revenue Service (IRS) for delinquent federal tax debts for tax years 2016 to 2020 and 2022.

The SOR debts include: a charged-off federal credit union debt with an approximate balance of \$968 (SOR ¶ 1.a: GE 3 at 2; GE 4 at 9); a delinquent medical account placed for collection with an approximate balance of \$911 (SOR ¶ 1.b: GE 3 at 2); a \$289 delinquent cell phone account placed for collection (SOR ¶ 1.c: GE 3 at 3; GE

4 at 6; GE 5 at 3-4); and a \$183 delinquent insurance account placed for collection. (SOR ¶ 1.d: GE 3 at 183; GE 4 at 2; GE 5 at 4).

Applicant's tax issues include: his failure to pay federal income taxes for tax years 2016 – 2020 and 2022 (SOR ¶ 1.e: GE 2 at 5); his failure to file federal and state income tax returns for tax years 2016 and 2021 (SOR ¶ 1.f: GE 2 at 5; GE 2 at 6); he owes the IRS approximately \$3,511 for delinquent taxes for tax year 2016 (SOR ¶ 1.g: GE 2 at 5, 9); he owes the IRS approximately \$4,097 for delinquent taxes for tax year 2017 (SOR ¶ 1.h: GE 2 at 5, 10); he owes the IRS approximately \$3,012 for delinquent taxes for tax year 2018 (SOR ¶ 1.i: GE 2 at 5, 13); he owes the IRS approximately \$2,702 for delinquent taxes for tax year 2019 (SOR ¶ 1.j: GE 2 at 5, 15); he owes the IRS approximately \$5,175 for delinquent taxes for tax year 2020 (SOR ¶ 1.k: GE 2 at 5, 17); and he owes the IRS approximately \$499 for delinquent taxes for tax year 2022 (SOR ¶ 1.l: GE 2 at 5, 21).

Additional allegations include: Applicant's wages were garnished for unpaid Federal taxes for tax year 2016 (SOR ¶ 1.m: GE 2 at 37); his wages were garnished in June 2023 for unpaid rent (SOR ¶ 1.n: GE 2 at 37); and his wages were garnished for failure to pay his personal property tax in the approximate amount of \$190. (SOR ¶ 1.o: GE 2 at 37)

Applicant states his financial problems were the result of poor money management and failure to pay bills on time. He also endured several periods of unemployment, including: from May 2011 to October 2011, from February 2009 to September 2009, from September 2008 to October 2008, from July 2008 to August 2008, and from January 2002 to March 2002. (GE 1 at 13, 15, 17-19; GE 2 at 25-26) His two divorces also adversely affected his finances.

Tax Issues

Applicant testified that all his tax returns are filed. The SOR alleges that he did not file his federal and state income tax returns for 2016 and 2021. The IRS account transcript for tax year 2016 indicates the income tax return was received by the IRS on November 1, 2019, and processed on January 6, 2020. The IRS account transcript for tax year 2021, dated January 28, 2024, indicates no federal income tax return had been filed. Applicant testified that he believes that the 2021 federal income tax return was filed after January 2024. The record was held open to allow Applicant the opportunity to submit a copy of his filed federal income tax return for tax year 2021. He did not submit anything after hearing. (Tr. 20-24; GE 2 at 9, 19)

Applicant testified that he filed all state income tax returns as well. He claims he does not owe any state income taxes. He was given an opportunity to provide copies of

his filed state income tax returns after the hearing. He did not submit additional evidence. (Tr.30-33)

Applicant owes approximately \$18,997 in delinquent federal income taxes for tax years 2016, 2017, 2018, 2019, 2020 and 2022. During the hearing, he estimated that the amount of total federal income taxes owed was approximately \$28,000. (Tr. 26-27) This past summer he set up a payment arrangement with the IRS. He agreed to pay \$300 monthly towards the delinquent federal tax debt. Unfortunately, his wife lost her job in June 2024, so he could not make the payments. She found employment in September 2024. In January 2025, he contacted the IRS to set up another payment plan. The IRS reinstated the original payment agreement. The payment plan was to start in March 2025, about a month after the hearing took place. He agreed to pay \$300 a month. After the hearing, Applicant was given time to get a copy of the new payment agreement with IRS. He did not provide any documentation. (Tr. 26 – 30)

SOR ¶ 1.m alleged Applicant's wages were garnished by the IRS for taxes owed in tax year 2016. He admits his wages were garnished in 2017. He was only able to comply with payments for four months. No payments were made towards his 2016 federal income tax debt after 2017. (Tr. 33-36) At the close of the record, the federal income tax debts alleged in SOR ¶¶ 1.g – 1.l remain unresolved.

Consumer Debts

The following is the status of the consumer debt alleged in SOR ¶¶ 1.a -1.d, 1.n, and 1.o:

SOR ¶ 1.a: \$968 charged-off credit union account: This was a personal loan Applicant took out to pay some bills. He defaulted on the loan about 2007 or 2008. He has been aware of the debt since 2015. He hopes to pay it off in the near future. (Tr. 42-43)

SOR ¶ 1.b: \$911 medical debt place for collection: At the close of the record, he has not made arrangements to pay the debt. (Tr. 45)

SOR ¶ 1.c: \$289 delinquent cell phone account placed for collection: At the close of the record, no payments have been made to resolve the debt. (Tr. 45)

SOR ¶ 1.d: \$183 insurance account placed for collection: At the close of the record, no payments have been made to resolve the debt. (Tr. 45-46)

SOR ¶ 1.n: In June 2023, Applicant's wages were garnished for unpaid rent: He claims the debt was paid in full through garnishment in November or December 2023. He

failed to pay rent in June 2023, because he made some bad life choices. He left his second wife and was having difficulty setting up a new household. He did not provide proof that the debt was paid in full. However, it is not listed on his credit reports. This allegation is found for Applicant. (Tr. 36-37)

SOR ¶ 1.o: \$190 garnishment for unpaid personal property taxes: Applicant claims this debt was paid off in a one-time garnishment in 2022. It was related to vehicle property taxes. While he did not provide proof that this debt was paid, it is not listed in his credit reports. This allegation is found for Applicant. (Tr. 38-40)

During the hearing, Department Counsel brought up several debts that were not alleged in the SOR, including: a car loan that was delinquent in the amount of \$567; an \$18,000 car loan. Applicant claims his wife got into a car wreck the day after they bought this vehicle. Applicant disputes the amount owed. He said the insurance company paid off the car note. Additional unalleged debts include a \$650 charged-off credit card account and \$476 past-due credit card account. Applicant mentioned these were on his list of debts to resolve. (Tr. 57-60) These debts were not alleged in the SOR. As such, I will not consider them under disqualifying purposes but will consider them under matters of extenuation and mitigation.

Applicant testified that he and his wife are in the process of improving their credit because they want to buy a house. They are working on resolving the federal tax debts first. In December 2024, they moved in with his in-laws in order to save money. Five of the children live with them. (Tr. 46, 48, 52)

Applicant earns about \$67,000 annually. His wife earned about \$68,000 annually. However, she recently lost her job. She will be starting a new job in a few weeks. They pay his in-laws \$700 a month for rent and utilities; his car payment is \$560; his wife does not have a car payment; groceries cost about \$1,200 a month. He has a 401(k) account but is not sure of the balance. They have had no formal financial counseling. They have no formal budget. They are trying to pay off what they can. (Tr. 48-54)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only 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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

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 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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 and 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts;

(c) a history of not meeting financial obligations: and

(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.

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable. AG ¶ 19(f) applies to his failure to file federal and state income tax returns for tax years 2016 and 2021, and his failure to pay federal income taxes owed for tax years 2016 – 2020 and 2022.

I find SOR ¶ 1.e for Applicant. It alleges he failed to pay his federal income taxes for tax years 2016 to 2020 and 2022. These allegations are individually alleged in SOR ¶¶ 1.g – 1.i. SOR ¶ 1.e is a repeat of these allegations and is not necessary. I also find

SOR ¶ 1.m for Applicant. The unpaid taxes for 2016 are also alleged in SOR ¶ 1.g. The fact that his wages were garnished is a fact and circumstance surrounding the allegations in SOR ¶ 1.g. It has no independent security significance.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply. Applicant's financial issues are ongoing. Applicant's failure to take steps to resolve his delinquent debts raises questions about his reliability, trustworthiness and judgment.

AG ¶ 20(b) partially applies. Circumstances beyond Applicant's control contributed to his financial issues. He endured several periods of unemployment and his wife has endured several periods of unemployment which have adversely affected their ability to

pay their debt. His two divorces also affected his ability to pay his debts in the past. However, it is given less weight because I cannot conclude Applicant acted responsibly under the circumstances because he neglected to pay his federal income taxes for tax years 2016 – 2020, and 2022. He had several delinquent consumer debts that remain unresolved at the close of the record. (SOR ¶¶ 1.a – 1.d) While he intends to pay some of the debts in the future, he did not come up with a plan to settle the remaining delinquent debts. He did not act responsibly under the circumstances.

AG ¶ 20(c) does not apply because Applicant has not attended formal financial counseling. There were no indications his financial problems were being resolved at the close of the record.

AG ¶ 20(d) does not apply. There is no indication that Applicant is making a good-faith effort to resolve his debts. A promise to pay his debts in the future is not sufficient.

AG ¶ 20(e) does not apply. Applicant does not dispute legitimacy of his past-due debts.

AG ¶ 20(g) partially applies. Applicant has provided proof that the 2016 federal income tax return was filed. He testified that he filed his 2021 federal income tax return but he did not provide proof that the return was filed and received by the IRS. Applicant owes the IRS for past-due income taxes for over seven years. While Applicant testified that he is resuming a repayment agreement with the IRS starting in March 2025, he did not submit proof of the repayment agreement after the hearing. At the close of the record, he owed the IRS approximately \$28,000 in delinquent income taxes and it is unclear whether he filed his 2021 federal income tax return without documentation. His tax issues remain unresolved.

The DOHA Appeal Board has held that failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. *See, e.g.,* ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.,* ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Overall, Applicant did not meet his burden of proof to mitigate the concerns raised under financial considerations. This decision should not be construed as a determination that Appellant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards resolving his federal and state tax issues

and his delinquent accounts, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

I considered Applicant's employment history with his current employer. I considered his and his wife's various periods of unemployment as well his previous divorces. While circumstances beyond his control contributed to his financial problems, he really has no plan in place to resolve his delinquent consumer debts. Even more important, he owes the IRS over \$28,000 in delinquent income taxes related to tax years 2016 to 2020 and 2022. He has ignored his federal tax debts for years. Applicant needs more time to get his financial situation in order. He did not demonstrate that he was attempting to resolve his delinquent debts and his federal tax issues. The security concerns raised under Financial Considerations are not mitigated.

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:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.d, 1.f – 1.l Against Applicant

Subparagraphs 1.e, 1.m, 1.n, 1.o For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge