



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



In the matter of: )  
 )  
 [NAME REDACTED] ) ISCR Case No. 14-06543  
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 Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

06/13/2016  
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**Decision**  
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MALONE, Matthew E., Administrative Judge:

Applicant did not carry his burden of producing information that mitigates the security concerns about his past-due or delinquent debts, and about his personal conduct. His request for eligibility for access to classified information is denied.

**Statement of the Case**

On May 6, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for access to classified information required as part of his employment with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup> On August 8, 2015, DOD issued a

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline E (Personal Conduct) and Guideline F (Financial Considerations).<sup>2</sup>

On September 4, 2015, Applicant responded to the SOR and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) subsequently issued a File of Relevant Material (FORM),<sup>3</sup> dated October 27, 2015, in support of the SOR. Applicant received the FORM on November 30, 2015, and had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant did not submit additional information within the time allotted, and the record closed on December 30, 2015. The case was assigned to me on April 1, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$21,058 for the three delinquent or past-due accounts listed at SOR 1.a - 1.c. As to SOR 1.c, it was also alleged that the unpaid debt at issue resulted from Applicant's deliberate failure to register his boat so as to avoid paying taxes and registration fees for the boat. This conduct was also alleged as adverse personal conduct under Guideline E (SOR 2.a). (FORM, Item 1)

Applicant is 43 years old. He and his wife have been married since June 2011, and they have one child, born in April 2013. Since April 2005, Applicant has been employed by various companies in web design and software engineering jobs. He was unemployed between October 2003 and April 2004, and between January 2014 and March 2014. (FORM, Items 2 and 6)

All of the SOR allegations are supported by the documents provided by the Government. (FORM, Items 1 - 6) In Applicant's response to the SOR (FORM, Item 1), Applicant admitted he was responsible for the debts and conduct alleged.

As to SOR 1.a, this is a debt for a delinquent second mortgage for a rental property. Applicant averred that he was repaying the delinquency at a monthly rate of \$175 through an agreement with the creditor. However, Applicant did not produce any information to support his response to this allegation.

The debt alleged at SOR 1.b is for a past-due payment on a car loan obtained in September 2011. This debt was first reported as past due in April 2014, and is likely related to Applicant's period of unemployment that ended the previous month. In support of his claim that he has paid this debt, Applicant provided a receipt for payment by credit card on August 18, 2015, of \$356 to the creditor listed in SOR 1.b. (FORM, Items 1, 3, and 4)

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<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included six exhibits (Items 1 - 6) proffered in support of the Government's case.

The debt and conduct alleged at SOR 1.c and 2.a arose when Applicant bought a boat in March 2012, but did not register it as required in the state where he lived. Applicant continued to use and enjoy the boat without proper registration. He admits he did not register the boat so he would not have to pay property taxes on it. As a result, he owed the state at least \$3,800 in taxes and other costs of registration. In response to the SOR, Applicant provided documentation showing that the boat was legally registered and the taxes on it were paid in July 2015. He further claimed that he did not initially register the boat and pay taxes on it because he had lost his job, and because his wife's income had fallen while she was pregnant in late 2012 and early 2013. At the time Applicant bought the boat in early 2012, he was gainfully employed, and remained employed for another 21 months. His wife did not become pregnant until about five months after he bought the boat. (FORM, Items 1 - 6)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.<sup>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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 and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(d) (*deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*). The Government's information shows that Applicant has a history of indebtedness, which continues insofar as SOR 1.a, the largest of the debts alleged, remains unresolved. It also shows he engaged in deceptive financial practices with respect to his failure to register his boat.

By contrast, I also considered the following pertinent AG ¶ 20 mitigating conditions:

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<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

These mitigating conditions do not apply. Applicant's debts and financial problems are recent, because they are ongoing and unresolved. Applicant's claims that his financial problems were caused by his 2014 unemployment and by his wife's loss of income because of pregnancy are not supported by the record. In fact, they are directly contradicted by the record. Applicant did not present any information regarding financial counseling or other assistance with his finances, and he did not present any information regarding the health or management of his personal finances. Although he has paid two of the debts alleged, his actions were undertaken only after they were delinquent for a long period of time. As to SOR 1.b, the debt was paid after he received the SOR. These actions do not constitute good-faith efforts to repay his debts. Finally, his claim that he is repaying the debt at SOR 1.a is not supported by any corroborating documentation. On balance, Applicant has not mitigated the security concerns about his finances.

## **Personal Conduct**

The Government's information about Applicant's deliberate failure to register his boat so he would not have to pay taxes and registration fees, and his continued illegal operation of that boat between March 2012 and July 2015, reasonably raises a security concern about his judgment, truthfulness, reliability, and trustworthiness. That security concern is expressed at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, this record requires application of the disqualifying condition at AG ¶ 16(c):

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 person may not properly safeguard protected information.

By contrast, the only potentially applicable mitigating condition is at AG ¶ 17(c):

the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

I conclude that the record does not support this mitigating condition. Applicant's conduct was undertaken deliberately and while he had the means to pay the taxes. His explanation for his conduct is not credible and only serves to heighten concerns about his trustworthiness and candor. Applicant's conduct – his illegal operation of the boat and disregard for his financial obligations to the state – continued for over three years. Applicant did not mitigate the security concerns under this guideline.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Nonetheless, Applicant did not carry his burden of presenting sufficient information to refute the SOR allegations or to mitigate the security concerns established by the Government's information. Without such information, doubts remain about his suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## **Conclusion**

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge