



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 18-01239  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2019

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant’s debts arose from, or were contributed to by, events and circumstances beyond his control, and he acted responsibly in addressing his debts. His information is sufficient to mitigate the security concerns about his financial problems. His request for a security clearance is granted.

**Statement of the Case**

On December 10, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant

to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 24, 2018, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The adjudicative guidelines cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). I received the case on March 11, 2019, and I convened the requested hearing on May 22, 2019. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on June 5, 2019. Department Counsel proffered Government Exhibits (GX) 1 – 3. Applicant testified and proffered Applicant Exhibits (AX) A - C. All exhibits were admitted without objection. Additionally, I held the record open after the hearing to receive additional relevant information. The record closed on June 17, 2019, after I received Applicant's post-hearing submissions (AX D – E) and Department Counsel's waiver of objections to their admissibility.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$31,021 for seven delinquent or past-due debts (SOR 1.a – 1.g). In response to the SOR, Applicant admitted all of the allegations without explanation. In addition to the facts established by Applicant's admissions and by the information presented with his Answer, I make the following additional findings of fact.

Applicant is 48 years old and has worked for a defense contractor since December 2010. He first received a clearance in 2011 and is now applying for renewal of his eligibility for access to classified information. His work directly supports ongoing military missions and he deployed for work in a combat zone from late 2010 until April 2012. (GX 2)

Applicant and his wife have been married since June 2000. They have one child (age 17) together, but also raised her two children (ages 26 and 27) from a previous marriage. Applicant also has a 26-year-old daughter born before his marriage. (GX 1; GX 2; Tr. 35 – 36)

Applicant and his wife separated for about nine months in 2015 after his wife had an extramarital affair. Applicant attributes his financial problems to expenses that arose during the separation. Those expenses included monthly child support for his minor child and legal fees incurred in anticipation of a divorce. Applicant and his wife reconciled but he was unable to keep making payments on a car he had purchased in March 2012. Applicant called the dealer and had the car voluntarily repossessed. The debt alleged at SOR 1.a is for the loan balance after resale. Additionally, in June 2014, Applicant co-

signed the purchase of a car with one of his stepchildren, who subsequently became unemployed and stopped making payments. Applicant claims the matter is being resolved by his stepchild and that the debt (SOR 1.b) will soon be removed from Applicant's credit history. (Answer; GX 1 – 3; AX E; Tr. 30 – 35)

Another debt Applicant accrued is a delinquent credit card account alleged at SOR 1.c. Applicant repaid that debt in February 2019. (GX 3; AX D; Tr. 47)

Available information also attributed to Applicant the four past-due medical bills alleged at SOR 1.d – 1.g. Applicant produced information that shows he paid the debt at SOR 1.e, and that the other bills were prematurely referred to collection because Applicant's medical insurance had not yet processed his claims for coverage. The record evidence shows SOR 1.d – 1.g have been resolved. (GX 2; GX 3; AX C; Tr. 43 – 47)

Applicant is in the process of repaying the car repossession debt at SOR 1.a. He and his wife have included the debt in a debt consolidation and resolution program Applicant's wife began to resolve three debts of her own. Together they pay \$528 each month to resolve their four outstanding debts. (AX B; Tr. 38 – 43)

Applicant's finances are currently sound and he has not incurred any new unpaid debts. Together they earn about \$91,000 annually. He and his wife have separate bank accounts; however, they manage the household finances together and are meeting all of their regular obligations (e.g., mortgage, car payments, insurance, and utilities). Applicant does not use credit cards and estimates he has about \$300 remaining each month after paying his part of the household expenses. He and his wife file their income tax returns as required, and other than his wife's debt consolidation program, they have not sought financial counseling or other professional assistance to resolve their financial problems. (Tr. 48 – 51)

Applicant has a good reputation at work. His supervisor for the last seven years speaks highly of Applicant's trustworthiness, hard work, reliability, and adherence to rules and regulations in handling sensitive information. (AX A)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the 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 for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national 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 in favor of the Government. (See Egan; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

The Government established that Applicant incurred delinquent or past-due debts, totaling \$31,021. Available information also showed that his debts remained unresolved as of August 2018. That information reasonably raises a security concern about Applicant's finances that is articulated at AG ¶ 18:

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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

By contrast, the record also requires application of the following AG ¶ 20 mitigating conditions:

- (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; and
- (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.

Applicant's financial problems began when he and his wife separated for about nine months in 2015. During that time, he incurred extra expenses, such as legal fees and child support. He fell behind on his car payments and a credit card, and after he and his wife reconciled, Applicant could not afford his missed payments. He voluntarily relinquished his car, but still owes a significant remainder after the car was resold. He is resolving that debt through a credit consolidation and repayment plan his wife has been

using to resolve her own debts. As to his delinquent credit card account, Applicant has paid that debt and no longer uses credit cards. As for the medical debts alleged in the SOR, information developed at hearing shows they either have been resolved or were prematurely referred for collection. As to the car repossession debt for his son's car, there is no documentation that supports Applicant's claim his stepson is rectifying that deficiency. The debt arose not long after Applicant and his wife reconciled. As with his other obligations at the time, Applicant was unable to make the required payments; however, he was credible in his assertions that he would ensure that his stepson rectifies that debt. Applicant's current finances are sound. He has not incurred any new unpaid debts, and he and his wife manage their finances together in a prudent manner. All of the foregoing supports application of the mitigating conditions at AG ¶¶ 20(a) – 20(e).

Financial problems present a two-fold inquiry. First, does the ongoing presence of unpaid debt or other unresolved financial burdens present a likelihood that Applicant would resort to illegal acts or other conduct that might compromise national interests? Here, that appears highly unlikely. Applicant has a reputation for reliability and trustworthiness that tends to show he would not act counter to the national interest as a way of resolving his debts. Additionally, the manner in which he has responded to his financial problems is indicative of a willingness to resolve his debts and further manage his finances through responsible and prudent measures.

Second, did Applicant's financial problems arise from irresponsible decisions, poor judgment, or other factors that indicate he is unreliable or untrustworthy? I conclude they did not. Applicant is in the midst of resolving debts related to his 2015 marital separation. That event did not arise through any misconduct or bad judgment by Applicant. The record as a whole establishes that those circumstances are unlikely to recur and that Applicant is now better equipped to manage his finances so they will not be a security concern in the future. On balance, available information is sufficient to mitigate the security concerns raised by Applicant's financial problems.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's job performance and reputation in the workplace. Additionally, his actions to resolve his debts evince a conscientiousness about his obligations and responsibilities that reflects well on his suitability for continued access to classified information. A fair and commonsense assessment of the record evidence as a whole shows that Applicant has mitigated the security concerns about his financial problems.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.g:	For Applicant

## **Conclusion**

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE  
Administrative Judge