



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 19-00075  
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Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

01/24/2020

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**Decision**

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MALONE, Matthew E., Administrative Judge:

The security concerns raised by Applicant’s 2016 alcohol-related arrest are mitigated. Applicant did not provide sufficient information to overcome the security concerns raised by his financial problems. Applicant’s request for eligibility for access to classified information is denied.

**Statement of the Case**

On September 20, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of his employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information, as required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On August 16, 2019, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption). The adjudicative guidelines (AG) 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 decision without a hearing.

On October 11, 2019, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a File of Relevant Material (FORM) that was forwarded to Applicant on October 24, 2019. The FORM contained six documents (Items 1 – 6) on which the Government relies to establish the facts alleged in the SOR. Applicant received the FORM on November 1, 2019 and was informed therein that he had 30 days from the date of receipt to object to the use of any or all of the information included in the FORM and to submit additional information in response to the FORM.

The record closed on December 4, 2019, after Applicant did not respond to the FORM or object to the consideration of any of the Government's exhibits. I received this case for decision on December 16, 2019.

### **Findings of Fact**

Citing Guideline F, the SOR alleged that Applicant did not timely file his federal (SOR 1.a) or state (SOR 1.b) income tax returns for the 2016 tax year; and that he did not timely file his federal (SOR 1.c) or state (SOR 1.c) income tax returns for the 2017 tax year. Additionally, the SOR alleged that Applicant owes the IRS \$3,516.54 in unpaid taxes from the 2015 tax year (SOR 1.e) (FORM, Item 1)

Citing Guideline G, the SOR alleged that in February 2016, Applicant was arrested and charged with driving under the influence (DWI) (SOR 2.c); that in July 2016, Applicant did not comply with court-ordered completion of an alcohol safety and awareness program (ASAP) (SOR 2.b); and that in July 2016, he was charged with ASAP non-compliance (SOR 2.a). (FORM, Item 1)

In response to the SOR, Applicant admitted with explanation each of the Guideline F allegations. His explanations included assertions that all of his income tax returns have been filed, albeit late due to work-related travel, and that he is in a repayment plan for the tax debt alleged at SOR 1.e. With his Answer, he provided a letter from a tax preparation service regarding taxes owed for 2015. Under Guideline G, Applicant admitted SOR 2.a and 2.c, but denied SOR 2.b. In support of his Answer, he provided records related to court-ordered counseling and other aspects of his DWI arrest. (FORM, Item 1). In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 30-year-old employee of a defense contractor, for whom he has worked as an installer since September 2017. He has worked for other companies in similar positions since about October 2013, and he was laid off at the end of contracts at least twice. This is his first application for a security clearance. When Applicant submitted

his e-QIP, he disclosed his 2016 DWI arrest, and he disclosed his failure to file and/or pay his federal and state income tax returns as alleged in the SOR. (FORM, Item 3)

During the ensuing background investigation, Applicant completed a subject interview (SI) with a government investigator on August 24, 2018. His DWI arrest was one of the topics discussed during the SI. Applicant stated (and other information shows) that on February 26, 2016, he was pulled over on his way home from a nightclub where he was working during one of his periods of unemployment. He consumed at least three mixed drinks a few hours before heading home. He was pulled over for reasons not stated in this record and, although he passed a field sobriety test, he failed a breathalyzer and was charged with DWI. Court and counseling records show he had a blood alcohol content (BAC) of between .15 and .20. Applicant was held overnight in jail and appeared in court to answer the charges on July 25, 2016. (FORM, Items 1, 2, 4, and 5)

Although Applicant has admitted the SOR 2.a allegation that he was charged with non-compliance with an order to complete ASAP, it is not clear in this record that there was any such order in place before his July 2016 hearing on the DWI arrest. The record on which this allegation was based (FORM, Item 6) places the offense on the same date as Applicant's court appearance in response to the DWI charge. At his hearing, Applicant pleaded guilty to a charge of DWI 1<sup>st</sup> Offense BAC .15 - .20. He was placed on one year of supervised probation and ordered to serve five weekends in jail, three of which were suspended. Additionally, Applicant's driver's license was suspended for one year. On November 8, 2016, he was given permission to drive on a restricted basis until July 2017, and an interlock breathalyzer was installed on his car until March 2017. The court also ordered Applicant to enroll in a 10-session ASAP by October 21, 2016, well after the date on which he was supposedly charged with ASAP non-compliance. Available information shows he enrolled as ordered and completed ASAP on December 1, 2016, with above-average marks for participation, attitude, and interest in the class. On March 14, 2017, Applicant also completed a court-ordered clinical evaluation by a licensed clinical social worker. That evaluation concluded Applicant had a moderate alcohol disorder, but he was not referred for any additional counseling as his was an isolated incident and he was receptive to counseling advice. Finally, Applicant attended five court-ordered Alcoholics Anonymous (AA) meetings and paid all fines and court costs in a timely manner. (FORM, Items 1 – 6)

Applicant has averred in response to the SOR that all of his income tax returns have been filed, albeit late after filing extensions. Although he disclosed much of this information in his e-QIP, a summary of the SI does not reflect any discussion of Applicant's income tax returns as part of other financial matters discussed. In response to interrogatories about his taxes from Department Counsel in January 2019, Applicant provided statements and documents that show the following:

- Applicant's state and federal income tax returns have not been filed for the 2016 tax year only.
- Applicant owes \$3,516.54 for unpaid federal taxes in the 2015 tax year. That debt initially was determined to be non-collectable, but subsequently was

referred to a collection agency in May 2018. Applicant entered into a repayment agreement with the IRS in May 2018, but the agreement ended in September 2018. The debt remains unpaid.

- Applicant's 2014, 2015, and 2017 income tax returns were filed a few months late. IRS records do not show that he requested a filing deadline extension in any of those years. Ironically, he filed for an extension of his 2016 return, but he has not yet filed that return. SOR 1.c is resolved for Applicant.
- Although he filed his other federal returns, there is no indication he has filed his state returns for 2016 or 2017. (FORM, Item 3)

In response to the SOR, Applicant provided a letter from the firm that prepared and filed his 2015 federal return. At that time, the SOR 1.e debt was \$2,637 and continues to accrue penalties and interest. (FORM, Item 1) Applicant did not provide any additional information about his finances. He also did not establish that he has consulted with any tax or other financial professionals for help in resolving his income tax filing discrepancies or other aspects of his finances.

### **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**

Available information shows that Applicant owes \$3,516.54 in unpaid federal taxes from 2015. That debt remains unresolved. He also has not filed his federal or state income tax returns for 2016. As to his state returns, although he filed his federal return for 2017, he did not establish that he filed his state returns for that year. Available information also shows that Applicant has filed his federal returns late at least three times since 2014. This information reasonably raises the security concerns articulated, in relevant part, 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, the Government's information requires application of the following AG ¶ 19 disqualifying conditions:

- (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.

I have also considered 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

(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.

None of these mitigating conditions apply. Applicant's only stated reason for not filing his income tax returns as required was that he was away on work-related travel. The record does not support his claims that he filed extensions or that he is in a repayment plan with the IRS. He has done nothing since September 2018 to address his tax debt, and he now is more than two years past due in filing his 2016 tax returns. As to his 2016 and 2017 state returns, Applicant did not meet his burden in response to the SOR and the FORM to show they have been filed or that he is taking some other tangible action to resolve those discrepancies. Applicant has not submitted information sufficient to mitigate the security concerns raised under this guideline by the Government's information.

### **Alcohol Consumption**

The Government's information showed that Applicant was arrested for DWI in February 2016. The allegations that he did not complete ASAP or comply with court-ordered counseling are directly contradicted by Applicant's response to the SOR, and I find for Applicant as to SOR 2.a and 2.b. Nonetheless, the information about Applicant's DWI arrest and conviction reasonably raise security concerns about alcohol consumption that are stated at AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Available information further requires application of the disqualifying condition at AG ¶ 22(a):

alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant's DWI arrest requires application of AG ¶ 22(a). As part of his sentence after he pleaded guilty, Applicant attended ASAP and was evaluated by a licensed clinical social worker. The evaluator noted the isolated nature of Applicant's DWI and his positive response to court-ordered counseling. Applicant successfully completed all of his court-ordered counseling and sentencing requirements over two years ago, and has not been involved in any other alcohol-related incidents in more than three years. The foregoing supports application of the mitigating condition at AG ¶ 23(a):

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

On balance, available information indicates Applicant's DWI arrest in early 2016 was an isolated event. Despite the SOR 2.a and 2.b allegations, it appears Applicant complied with the court's directions pursuant to his guilty plea. The security concerns raised by the Government's information about Applicant's use of alcohol are mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines F and G, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Mitigation of the security concerns about Applicant's use of alcohol notwithstanding, my review of all of the available information leaves unanswered the doubts about Applicant's suitability for access to classified information. Applicant has not timely complied with his tax reporting obligations since at least 2014. A debt he incurred in the 2015 tax year remains unresolved and he still has not filed his 2016 returns. Applicant's response to the SOR falls far short of resolving these concerns. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

### **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:

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|-----------------------------------|-------------------|
| Paragraph 1, Guideline F:         | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.b, 1.d, 1.e: | Against Applicant |

|                           |               |
|---------------------------|---------------|
| Subparagraph 1.c:         | For Applicant |
| Paragraph 2, Guideline G: | FOR APPLICANT |
| Subparagraphs 2.a – 2.c:  | For Applicant |

**Conclusion**

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

MATTHEW E. MALONE  
Administrative Judge