



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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[NAME REDACTED] ) ISCR Case No. 20-01613  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

12/10/2021

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to mitigate the security concerns raised by Applicant's financial problems. Applicant's request for eligibility for access to classified information is denied.

**Statement of the Case**

On September 14, 2019, 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 for the Department of Defense (DOD) 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 October 2, 2020, the DOD issued a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National

Intelligence (DNI) 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 July 21, 2021, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM) that was received by Applicant on July 27, 2021. The FORM contained six exhibits (Items 1 – 6) on which the Government relies to support the SOR allegations. Applicant was informed he had 30 days from receipt of the FORM to submit additional information. He did not submit anything further and the record closed on August 26, 2021. I received the case for decision on October 6, 2021.

### **Findings of Fact**

Under Guideline F, the SOR alleged that Applicant owes \$24,678 for seven delinquent or past-due debts consisting of one medical account and six federally subsidized student loans (SOR 1.a – 1.j). In response, Applicant admitted with explanations all seven allegations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 27-year-old employee of a defense contractor, for whom he has worked since September 2018. Applicant and his wife married in November 2014. After graduating from high school, he attended college between 2012 and 2014. He left school before earning a degree to work in his father's small business in State A. Eventually, Applicant and his then fiancée were the only two remaining employees in a company usually staffed by 20 people. They worked without pay until leaving after a falling out with his father in 2018. They then moved to State B, where Applicant obtained his current job, which requires a security clearance. (FORM, Items 4 and 6)

Applicant obtained the student loans addressed at SOR 1.b – 1.j to fund his college tuition. After his deferment ended, either he worked in jobs that did not pay well or worked for no pay in his father's business. He eventually defaulted on the loans in March 2018. (FORM, Items 5 and 6)

In November 2019, Applicant was interviewed during his background investigation about his student loan delinquencies, as well as about the delinquent medical account alleged at SOR 1.a. He stated that he would contact his creditors and establish a repayment plan for his student loans and that he would resolve his medical debt. In his SOR response, Applicant indicated that he had paid the medical debt, and that account does not appear on the May 2020 credit report presented by the Government. SOR 1.a is resolved for the Applicant. (FORM Items 3 and 5)

As to his student loans, Applicant acknowledged in his Answer that those accounts are still delinquent. He did not produce any information, in response to either the SOR or the FORM, that shows he has taken any steps to resolve his student loan debts. He also did not provide any information about his current finances. (FORM, Items 3 and 6).

## **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 AG ¶ 2(d). 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 \$24,678 for six past-due student loans. Those accounts have been delinquent for more than three years. Although it appears that he resolved a delinquent medical debt, this record does not reflect any action

taken to pay or otherwise resolve his student loan debts. 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

More specifically, the Government's information requires application of the following AG ¶ 19 disqualifying conditions:

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

I also have 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The Government's information presents a *prima facie* case for disqualification. Accordingly, it was incumbent on Applicant to present sufficient reliable information on which application of available mitigating conditions could be based. He did not do so. His student loan debts remain unresolved and the record does not contain information that indicates his circumstance and lack of action will change anytime soon. Applicant did not meet his burden of persuasion to overcome the Government's case for disqualification from access to classified information.

In addition to my evaluation of the facts and application of 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(d). The record evidence as a whole presents unresolved doubts about Applicant's suitability for access to classified information. His ongoing financial problems leave him at risk of engaging in unacceptable conduct to resolve his debts. Further, his lack of action in that regard reflects adversely on his judgment. Because protection of the national interest is the principal focus in these adjudications, any remaining doubts must be resolved against allowing access to sensitive information.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.j:	Against 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