



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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[NAME REDACTED] ) ISCR Case No. 23-00439  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: A.H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

10/10/2023

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant continued to accrue delinquent or past-due debts after being discharged of nearly \$100,000 of previous debt through a 2019 Chapter 7 bankruptcy. He did not mitigate the resulting security concerns about his finances. His request for eligibility for access to classified information is denied.

**Statement of the Case**

On July 29, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information required for his employment with a federal contractor. After reviewing the results of the ensuing 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 April 24, 2023, the DOD sent Applicant a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations). The action was taken pursuant to and consistent with Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On May 11, 2023, 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 Applicant received on May 18, 2023. The FORM contained eight exhibits (Items 1 – 8) on which the Government relies to support its case.

Applicant was advised he had 30 days from receipt of the FORM to object to any of the Government's exhibits and to provide additional information in response to the FORM. He did not submit any additional information and he did not raise any objections to the Government's exhibits. The record closed on June 20, 2023, and I received the case for decision on September 13, 2023.

### **Findings of Fact**

Under Guideline F, the SOR alleged that in January 2019, Applicant was discharged of his debts through a Chapter 7 bankruptcy petition he filed in September 2018 (SOR 1.a). It further alleged that he owed \$7,735 for six past-due or delinquent debts (SOR 1.b – 1.g). In response, he admitted each allegation (with comments), thus establishing them as facts. Based on my review of the information presented in the FORM, I make the following additional findings of fact. (FORM, Item 1)

Applicant is a 40-year-old employee of a federal contractor, for whom he has worked since July 2022. He earned an associate degree in 2019, and he has taken other courses at a vocational and technical school. He and his wife have been married since 2004 and have three children under age 18. (FORM, Item 2)

Applicant served on active duty and in the reserves between July 2004 and March 2012. He held a security clearance while in the military. In 2010, a reinvestigation of his eligibility for clearance showed that he was delinquent or past due on at least eight personal credit accounts. Based on his representations that he was receiving financial counseling and that he was paying or otherwise resolving his debts, adjudicators decided to renew his clearance on a conditional basis. (FORM, Items 2, 3, 7, and 8)

In his July 2022 e-QIP, Applicant disclosed that, as alleged in SOR 1.a, he was discharged of his debts through a Chapter 7 bankruptcy petition. As co-debtors, he and his wife declared assets of \$38,950 against liabilities totaling \$117,840. Unsecured claims against them totaled \$96,954. During the background investigation initiated when he submitted his e-QIP, investigators obtained a credit report that reflects the delinquent debts alleged in SOR 1.b – 1.g. Applicant discussed those debts with an investigator

during a personal subject interview (PSI) on November 29, 2022. During the PSI and in response to the SOR, he stated that his recent financial problems arose from a combination of lost income during the COVID pandemic, brief periods of unemployment, and a few ill-advised financial decisions. He also acknowledged having financial problems while he was in the military, which he resolved by taking out a loan to pay his past-due debts. As of his PSI, he reported after expenses having little remaining money each month, and he expressed a general intent to resolve his financial problems. In his April 2023 response to the SOR, he stated that he either is on or is working to establish repayment plans for his debts. He further claims to have reduced the \$511 debt alleged at SOR 1.d to \$297. He did not submit any corroborating documents in response to the Government's information. He has not received financial counseling since 2010. (FORM, Items 1, 2, 3, and 6)

After leaving active duty in 2011, Applicant worked in a series of jobs before being hired by his current employer. Between 2013 and 2021, he was unemployed three times for a total of 15 months, most recently between May 2020 and February 2021, due in large part to the COVID pandemic. During that time, he received benefit payments from the government, which he used to pay rent and buy food. He has been continuously employed since February 2021.

### **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 supports the SOR allegations and reasonably raises the security concern about finances stated 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, this record 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 pertinent mitigating conditions available under AG ¶ 20:

(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 information presented by the Government established a *prima facie* case for disqualification of Applicant from access to classified information. Thus, it fell to Applicant to present information sufficient either to refute the SOR allegations or to mitigate the security concerns established by the adverse information presented. He did not meet his burden of producing such information. Although he claims to have made payments on some of his debts, and that he intends to establish repayment plans for others, he presented no information that would support those claims. He did not establish that his financial problems arose from circumstances either beyond his control or that are unlikely to recur. He has not produced a record of consistent payments or other actions that would show a good-faith effort to resolve his debts. And while it appears he obtained counseling and assistance with his finances when his clearance was last reviewed in 2010, he has not done so in response to his current financial problems. Although not alleged, the information about the 2010 adjudication is relevant to my assessment of possible mitigation under this guideline. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

Applicant did not present any reassuring information about his current personal finances. The fact that he has begun to accrue delinquent debt less than five years after a Chapter 7 bankruptcy discharge does not inspire confidence that his financial problems are no longer a security concern. He did not mitigate the security concerns under this guideline. In addition to my evaluation of the facts and my 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). Available information leaves unchanged the doubts raised about his judgment and reliability that have been raised by his financial problems. Because the protection of the national interest is the principal goal 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.g:                   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