



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-01335
	)	
Applicant for Security Clearance	)	

**Appearances**

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

12/10/2014

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by multiple past-due debts. His personal finances are improved, and he acted reasonably in response to the financial problems caused by circumstances beyond his control. His past-due debts do not indicate poor judgment or a lack of trustworthiness, and he is not likely to incur new debts or other financial problems in the future. His request for a security clearance is granted.

**Statement of the Case**

On January 31, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for a security clearance required for his work as a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine that it was clearly consistent with the national interest for Applicant to hold a security clearance.<sup>1</sup>

On June 9, 2014, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline<sup>2</sup> for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

The case was assigned to me on September 29, 2014 and I convened a hearing on October 22, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A - C. I left the record open after the hearing to afford Applicant time to submit additional relevant information. The record closed on October 28, 2014, when I received information that has been included in the record as Ax. D. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on November 7, 2014.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$643 for unpaid state income taxes, and that the debt was being enforced through a tax lien against Applicant that was filed in November 2010 (SOR 1.a). SOR 1.a is resolved for the Applicant. The Government further alleged that Applicant owed \$35,815 for two past-due mortgage debts (SOR 1.b and 1.c). Applicant denied SOR 1.a and provided documentation showing that the state tax lien has been released. He admitted the other SOR allegations, with explanations. In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 55 years old and works for a defense contractor as a voice-over-internet-protocol (VOIP) technician. He has an excellent reputation in the workplace for reliability and adherence to his security responsibilities. (Gx. 1; Ax. C)

Applicant served in the U.S. Army from November 1982 until being honorably discharged in October 1989. In the Army, he was trained and assigned as a telecommunications specialist in the Signal Corps. After leaving the military, he worked for an electrical company until 1999. Thereafter, he worked as a senior technician with a national telecommunications company. He was laid off due to declining business in March 2009. (Gx. 1; Tr. 55)

Applicant was hired for his current position in November 2012. After being laid off in 2009, he was unemployed for 18 months before working in a series of short-term temporary positions. Most of his jobs between 2009 and 2012 lasted for about three or

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

<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

four months. He was also unemployed between February and April 2011, and between September and November 2011. Applicant relied on savings and unemployment benefits between April 2009 and October 2010. His salary between then and November 2012 averaged between \$12 and \$16 per hour. He had no employer-sponsored medical or other benefits during that period. In his current job, he earns about \$65,000 annually and has medical benefits for his family.

Applicant and his wife have been married since November 1997. They still live in a house they bought in 2001, and they have two children, ages seven and eight. Both children were under three years of age when Applicant was laid off in 2009. He is the sole income earner and his wife is a stay-at-home mother. (Gx. 1; Gx. 2; Tr. 58)

Applicant did not timely pay his 2009 state income taxes (SOR 1.a) because he had been laid off and did not have enough money to meet that obligation. However, he has always filed his income tax returns on time and he has otherwise been able to pay all of his taxes as required. After Applicant exhausted his savings in 2010, he also was unable to stay current on a second mortgage (SOR 1.b) and a home equity loan (SOR 1.c).

In 2010, Applicant contacted all of his creditors to negotiate settlements or repayment agreements. The terms they demanded at the time were beyond his ability to pay. However, after he was hired for his current job in 2012, he was able to repay his tax lien and to establish a repayment agreement with the law firm that was collecting the SOR 1.b debt. In 2014, Applicant was able to withdraw about \$11,000 from a pension account he had with the electrical company where he worked until 1999. He used most of that money to settle the SOR 1.b debt, which he paid off in October 2014. Applicant also has established a repayment plan with the creditor that now holds the SOR 1.c debt. He anticipates he will also be able to settle that debt as well. (Answer; Ax. B; Ax. D; Tr. 59 - 60)

Applicant's current finances are sound. Although he has a modest monthly cash flow of less than \$200, he has accrued no new delinquent debt; he is current on two used car loans; and he is meeting all of his regular obligations. Applicant is still the sole income earner for his family.

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>3</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

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<sup>3</sup> See Directive. 6.3.

(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>4</sup> for an applicant to either receive or continue to have access to classified information. 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.<sup>5</sup>

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.<sup>6</sup>

## **Analysis**

### **Financial Considerations**

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; AG ¶ 2(b).

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows Applicant has been unable, not unwilling, to repay his past-due debts.

I have also considered the following pertinent 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, 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.

Applicant's financial problems arose when he was laid off in 2009 and was unemployed for 18 months thereafter. During that time, he acted reasonably by making sure he could keep the home he and his wife had purchased in 2001. He was the sole income earner because his wife had to stay home and care for their two young children. Applicant sporadically found work between 2010 and 2012, but his wages were too low to enable him to keep up with all of his obligations and resolve his past-due debts. Once he started consistently earning a better wage in 2012, he was able to resolve his state tax debt. In 2013, he became eligible to receive pension money from a past employer. He used that to resolve one of his mortgage debts. He has since established a repayment plan for the other mortgage debt. Applicant's current finances are sound and he is meeting all of his current monthly obligations.

All of the foregoing supports application of the mitigating conditions at AG ¶¶ 20(a) - (d). I conclude that available information is sufficient to mitigate the security concerns raised by Applicant's financial problems.

### **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 55 years old and presumed to be a mature, responsible adult. Despite unexpected financial difficulties that arose through no fault of his own, Applicant has been able to resolve the debts alleged in the SOR. His financial problems did not arise through any misconduct or from poor financial management. When he was once again employed full time, he corrected most of his past-due financial obligations. His finances are sound because he exhibited good judgment and reliability in fulfilling his responsibilities. A fair and commonsense assessment of all available information shows that Applicant's finances no longer present an unacceptable security risk.

### **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.c:	For Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge