



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-01865
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/21/2015

**Decision**

MALONE, Matthew E., Administrative Judge:

The security concerns about Applicant’s personal conduct stemming from non-judicial punishment while in the military are mitigated. Applicant’s financial problems are also mitigated. His request for a security clearance is granted.

**Statement of the Case**

On November 27, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment at a defense 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 national interest for Applicant to continue to hold a security clearance.<sup>1</sup>

On July 2, 2014, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines<sup>2</sup> for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) subsequently submitted a File of Relevant Material (FORM) in support of the SOR. In his timely response to the FORM, Applicant requested that his case be converted to a hearing. DOHA granted his request on January 29, 2015.

This case was assigned to me on May 7, 2015. I convened a hearing on May 27, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A - E. All exhibits were admitted without objection. A transcript of the hearing (Tr.) was received on June 4, 2015.

### **Findings of Fact**

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant's mortgage had a remaining balance of \$220,574 and was "in foreclosure status" (SOR 1.a); and that he owes \$3,147 for a delinquent credit card (SOR 1.b). Applicant admitted, with explanation, SOR 1.a and denied SOR 1.b, claiming the debt was the responsibility of his ex-wife.

Under Guideline E, the Government alleged that in November 2011, Applicant received non-judicial punishment while serving in the U.S. Air Force for making a false official statement, a violation of the Uniform Code of Military Justice (UCMJ). Applicant admitted this allegation with explanation.<sup>3</sup> In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor, for whom he has worked as a plane captain and aerospace technician since February 2014. He served in the Air Force from April 2002 until he was honorably discharged as a staff sergeant in September 2012. After his discharge, he worked for a different defense contractor in a similar capacity until he was hired for his current position. Applicant has held a security clearance since November 2002. (Gx. 1; Tr. 45)

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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).

<sup>3</sup> The SOR initially presented a second allegation under Guideline E (SOR 2.b). At hearing, Department Counsel withdrew SOR 2.b. (Tr. 6 - 7)

Applicant and his current wife have been married since October 2014. He was previously married from October 2005 until he and his ex-wife divorced in July 2014. They have one child, now age 8, who lives with Applicant's ex-wife. In the divorce, Applicant agreed to pay about \$380 in monthly child support, as well as about \$400 each month for daycare. Applicant also has maintained health insurance coverage for his child. He has always met his support obligations on time. (Tr. 43 - 44)

Applicant and his ex-wife lived in a house they bought in 2006 by obtaining a mortgage through the Department of Veterans Affairs (VA). Applicant's ex-wife worked during their marriage and contributed about one-third of the monthly mortgage payments. They agreed to separate in September 2009, while Applicant was still in the Air Force and deployed overseas. His ex-wife stayed in the house and continued to contribute to the household finances until Applicant returned in January 2010. She stopped helping with the mortgage and other monthly obligations when she and their child moved out. (Tr. 42, 69)

Applicant lived in the house from January 2010 until July 2014, when his divorce became final. However, starting in about January 2011 he realized that he was having trouble making his monthly mortgage payments. Up to that point, he had used his savings to offset the loss of his ex-wife's income in meeting his mortgage and other obligations. Applicant first missed a mortgage payment in October 2011. But when his savings ran out, he started trying to negotiate with his mortgage lender to obtain a mortgage modification. He also tried to make partial payments but the lender would not accept them. Information he submitted at hearing documents correspondence with the original lender from January 2011 until October 2012, and with the lender identified in SOR 1.a between September 2013 and June 2014. (Ax. D; Tr. 36, 42, 45 - 48)

Applicant's efforts to obtain a mortgage modification were unsuccessful. The mortgage may have been in foreclosure status as alleged at SOR 1.a, but the property was ultimately purchased through a short sale in April 2015. At the time, the balance remaining on the mortgage was about \$220,000, but it was sold \$180,000. Applicant wanted to sell the house himself in 2011, but the value had fallen to about \$170,000 at the time and he was "upside down" on his mortgage. Because he purchased the home using a VA mortgage, he was prohibited from renting it out to cover his obligations. Applicant does not yet know if the unpaid amount of the mortgage will be reported as income for 2015. Nothing was presented at hearing to suggest that the lender is demanding Applicant pay the remaining mortgage balance. (Ax. D; Tr. 48 - 52)

The debt alleged at SOR 1.b is for a delinquent credit card. According to a financial statement compiled during their divorce, the account is Applicant's ex-wife's responsibility. However, Applicant and the creditor have agreed to settle the debt for fifty percent of the total balance due. Applicant will pay the debt and try to get his ex-wife to reimburse him. Applicant was not aware that the debt was delinquent because the statements were being sent to his ex-wife's house. (Ax. E; Tr. 37 - 38)

Applicant's current finances are sound. As of the hearing, he was temporarily assigned for several months in another state and was receiving additional pay to cover his expenses. Even after paying for lodging, food, and travel, and after meeting his regular expenses at home, Applicant has had a positive monthly cash flow of about \$5,000. When he is working at his regular job site, he has about \$2,000 remaining each month after expenses. Applicant files and pays his taxes on time, he has never failed to meet his post-divorce support obligations, and he has not accrued any new debts he cannot pay. Applicant has about \$22,000 in regular savings, and about \$10,000 in a retirement savings account. He and his wife drive used cars that are paid for, and they live modestly and well within their means. (Tr. 55 - 63, 70)

While Applicant was on active duty in the Air Force, he was charged with making a false official statement, a violation of UCMJ Article 107. In November 2011, Applicant, whose principal skill set was as crew chief, was assigned collateral administrative duties as his command's physical fitness coordinator. In listing the status of command members' annual physical fitness assessment (PFA) completion, he listed one airman as not being required to take the PFA. Applicant knew that the airman, a friend of his, was due to be discharged after the date of the PFA. But Applicant also knew she would not have any continuing obligation in the Air Force Reserve or the Air National Guard, and that she would not be eligible to reenlist at a future date. Applicant's entered the airman's status in a command report, thereby making a false official statement.

Applicant was aware of administrative exceptions in the applicable Air Force regulations that account for members who are technically required to take the PFA, but for whom doing so is a waste of time. At the time Applicant submitted his report, his commanding officer was away on a temporary assignment. Rather than seek approval for an administrative exception for the member, which everyone involved with the matter agreed would have been given, Applicant decided to enter the airman as not requiring the PFA. When a senior enlisted supervisor questioned Applicant about the entry, Applicant admitted what he had done. He was subsequently charged with violating UCMJ Article 107 and received non-judicial punishment (NJP). Numerous letters of support submitted as part of his defense by senior Air Force enlisted colleagues uniformly praised his professionalism and integrity, and observed that his conduct in this regard was an aberration. (Gx. 1; Gx. 2; Ax. B; 39 - 40, 63 - 67, 71)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</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>4</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>5</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>6</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>7</sup>

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; AG ¶ 2(b).

## Analysis

### Financial Considerations

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

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.

More specifically, this record supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

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;
- (d) the individual initiated 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.

All of these mitigating conditions apply. Both of the debts alleged in the SOR arose from Applicant's divorce. Even though he established that SOR 1.b is his ex-wife's responsibility, he has reached a settlement agreement with the creditor and has

the means to pay the debt. As to SOR 1.a, despite his best efforts, Applicant's mortgage obligations became hard to meet because he lost his ex-wife's contribution to it and he exhausted his savings trying to keep up with his payments. Applicant was proactive, albeit unsuccessful, in trying to negotiate a mortgage modification. Despite the fact that he was unable to keep his house, he avoided foreclosure and the mortgage was resolved through a short sale in April 2015. It does not appear that he has any remaining obligation for that loan. Applicant's finances are once again sound. He has remarried and has rebuilt his savings so that he is better able to avoid similar financial problems in the future. The security concerns raised by the Government's information about Applicant's finances are mitigated.

## **Personal Conduct**

Applicant disclosed in his EQIP the misconduct alleged at SOR 2.a. In 2011, he knowingly falsified an official Air Force document and was punished through NJP. This information reflects adversely on Applicant's judgment, truthfulness, and reliability. Accordingly, it raises a security concern that is articulated at AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

More specifically, I have considered the potential applicability of the following AG ¶ 16 disqualifying conditions:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

In addition to the general concern his offense raised about his personal conduct, Applicant's deliberate falsification also constituted a criminal act insofar as it violated the UCMJ. Applicant does not contest that he falsified the document and he knows that he should have obtained his command's approval for the administrative exception available under the circumstances.

By contrast, the record also requires application of the mitigating condition at AG ¶ 17(c):

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

At the time he was charged and disciplined through NJP, senior enlisted members, with whom Applicant had served for several years, submitted letters of support for his defense. Those letters unanimously report that Applicant was a dedicated and professional airman who displayed exemplary integrity and reliability. The misconduct at issue was, for them, an aberration that was not reflective of his judgment or trustworthiness. Combined with the sound judgment he exhibited in dealing with his financial problems, the record evidence as a whole supports a conclusion that the security concerns about Applicant's personal conduct are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Throughout the investigative and adjudicative processes, Applicant has been candid and forthright about the adverse financial and personal information in his background. He has held a security clearance since 2002, and he is an honorably-discharged Air Force veteran. Additionally, Applicant acted responsibly in dealing with the adverse results of his divorce by meeting all of his child support obligations while trying to resolve his mortgage problems in a proactive manner. A fair and commonsense assessment of all available information shows that the doubts about Applicant's continued suitability for access to classified information raised by his financial problems and personal conduct have been satisfied.

### **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.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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