



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

)  
)  
)  
)  
)  
)  
)

ISCR Case No. 14-04531

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not carry his burden of producing information that mitigates the security concerns about his past-due or delinquent debts. His request for access to classified information is denied.

**Statement of the Case**

On March 5, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information required as part of his employment with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

---

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

On February 24, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).<sup>2</sup> On April 11, 2015, Applicant responded to the SOR and requested a decision without a hearing. On October 27, 2015, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on November 13, 2015, and had 30 days from the date of receipt to submit additional information in response to the FORM. Applicant did not submit additional information within the time allotted. The record closed on December 13, 2015, and the case was assigned to me on March 15, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$62,763 for the ten delinquent or past-due accounts listed at SOR 1.a - 1.g, 1.i and 1.j. It was also alleged that he owes an unspecified amount of federal income taxes for 2012 (SOR 1.h). In his Answer, Applicant admitted SOR 1.a - 1.d and 1.h. He claimed the debt at SOR 1.j is a duplicate of SOR 1.a, and he did not respond to SOR 1.i. (FORM, Items 1 and 2) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is a 58-year-old employee of a defense contractor, where he has worked since March 2008. He was unemployed for the five months preceding his hiring because a computer analyst job he had held since September 2000 was moved to another state. Applicant previously held a security clearance while serving in the U.S. Navy from January 1976 until retiring in July 2000. (FORM, Item 3)

Applicant and his wife have been married since September 1992. A previous marriage began in August 1975 and ended by divorce in September 1992. (FORM, Item 3)

Applicant disclosed in his EQIP a debt for unpaid taxes that was resolved through wage garnishment by 2012. A credit report reflected this debt, as well as the debts alleged at SOR 1.a - 1.g, 1.i and 1.j. In the course of discussing these debts and his financial problems with a Government investigator in April 2014, Applicant disclosed that he had not paid his federal taxes for 2012. He estimated the debt owed was between \$2,000 and \$4,000. Applicant also disclosed that, in addition to the mortgage-related debts alleged at SOR 1.c and 1.i, the mortgage for a previous home he had bought was foreclosed in 2008. (FORM, Items 3 and 4)

The credit reports presented in the FORM document all of the debts alleged in the SOR. While Applicant cites his period of unemployment as a contributing factor in the accrual of his debt, several of the debts pre-date his loss of income in 2007. Further, in his April 2014 interview, he stated that he spent the first few months of his

---

<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven exhibits (Items 1 - 7) proffered in support of the Government's case.

unemployment traveling around the country and that his wife's income sufficed to support them despite his unemployment. In response to the SOR and the FORM, Applicant did not produce any information showing that he is paying or otherwise attempting to resolve any of his past-due debts. Nor did he produce any information regarding his current finances (e.g., monthly income, monthly expenses, etc.) (FORM, Items 4 - 7)

## **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. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new 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<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for

---

<sup>4</sup> Directive. 6.3.

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

<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

them to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Financial Considerations

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern 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, 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*). This record presents reasonable security concerns about a significant amount of unpaid debt and a history of financial problems over at least the past ten years.

By contrast, I also have considered the following pertinent AG ¶ 20 mitigating conditions apply:

(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;

---

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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.

Applicant's debts and financial problems are recent, because they are ongoing and unresolved. Any claim that Applicant's unemployment was an unforeseen cause of his indebtedness is eclipsed by the fact that most of his debts, including an earlier foreclosure and failure to pay his taxes, predate his loss of income. There has been no documented effort, in good faith or otherwise, to pay his debts, and Applicant has not established that any of the alleged debts are not his. Finally, Applicant has not sought financial counseling or other professional financial help, and he did not establish that his financial problems are under control. On balance, Applicant has not mitigated the security concerns about his finances.

In addition to evaluating the facts and applying 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(a). I have considered Applicant's career of Naval service and the fact that he generally has been gainfully employed since retiring from the military. Nonetheless, Applicant did not carry his burden of presenting sufficient information to refute the SOR allegations or to mitigate the security concerns established by the Government's information. Without such information, doubts remain about his suitability for access to classified information. Because protection of the national interest is the principal focus 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.j:	Against Applicant
--------------------------	-------------------

## **Conclusion**

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

---

MATTHEW E. MALONE  
Administrative Judge