



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



In the matter of: )  
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 [NAME REDACTED] ) ISCR Case No. 14-05654  
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 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

02/03/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his financial problems and his deliberate omission of relevant and necessary information from his security clearance application. His request for a security clearance is denied.

**Statement of the Case**

On October 24, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew eligibility for a security clearance required for his employment with 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 June 10, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines<sup>2</sup> for financial considerations (Guideline F) and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on August 26, 2015, and I convened a hearing on October 23, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 6. Applicant testified but presented no documents. A transcript of the hearing (Tr.) was received on November 3, 2015.

### **Findings of Fact**

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant owed \$34,608 for 17 past-due or delinquent debts (SOR 1.a - 1.q); and that in 2008, he was discharged of his debts through a Chapter 7 bankruptcy petition (SOR 1.r). In response, Applicant denied the allegations at SOR 1.d, 1.e, 1.g, and 1.h. He admitted the remaining Guideline F allegations.

Under Guideline E, the Government alleged that Applicant intentionally falsified answers in his EQIP by omitting the debts alleged in SOR 1.a - 1.q, which he was required to disclose. (SOR 2.a) Applicant admitted this allegation. In addition to the facts established by these exhibits and by Applicant's admissions, I make the following findings of fact.

Applicant is 47 years old. He and his wife have been married since February 2006, and they have four children between age 7 and 11. Applicant was married before from June 1994 until divorcing in February 2006. He and his first wife had one child, now 19 years old, for whom Applicant paid child support as a term of his divorce. Applicant acknowledged that he fell behind on his child support payments, and that he incurred the \$4,120 arrearage alleged at SOR 1.d. He also claimed that he repaid that debt through increased payments, that he no longer has to pay child support since his daughter is now over 18 years old. Although he may not have to make regular payments, he did not document his claim that he paid SOR 1.d, an arrearage which is a continuing obligation. That debt is still attributed to him in a 2015 credit report provided by the Government. (Gx. 5)

Applicant served in the U.S. Air Force and held a security clearance from June 1998 until retiring as a technical sergeant in April 2008. Applicant was trained as a crew chief in the Air Force and he has worked as an airframe and power plant mechanic for

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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).

different employers since he retired. When Applicant was preparing to retire, he applied for a program that would allow him to continuing serving as an active reservist at a National Guard base in another state, while preserving his active duty retirement benefits. In April 2008, he relocated his family to that state. When he reported for duty at the National Guard base, he was told the program no longer existed and that there was no job for him. He remained unemployed from then until March 2009, when he was hired as an aircraft mechanic by a large defense contractor. Since March 2009, Applicant has been steadily employed as an aircraft mechanic with at least five different companies; however, his income has fluctuated because sometimes he has had to change jobs after being laid off when contracts ended. (Gx. 1; Gx. 2; Tr. 72 - 74)

As alleged in SOR 1.r, Applicant filed for a discharge of his debts through a Chapter 7 bankruptcy petition in July 2008. He declared \$247,380 in liabilities against \$186,962 in assets, and he was discharged of his debts in November 2008. The debts alleged in SOR 1.a - 1.q were incurred after Applicant's 2008 bankruptcy. Since April 2012, Applicant's employment has required him to be away from home for weeks and months at a time. He attributes his current financial problems to his wife's mismanagement of their finances in his absence. Applicant claims he first became aware of the true scope of his indebtedness when he was interviewed for his clearance by a Government investigator in January 2013. Although he questions the accuracy of some of the debts, he generally admits they are his responsibility and he has expressed his intent to resolve them. Applicant did not provide any documentation reflecting efforts to resolve his debts. (Gx. 2; Tr. 55 - 58, 74 - 75)

When Applicant submitted his EQIP, he disclosed his 2008 Chapter 7 bankruptcy. However, he did not disclose any of the debts he accrued since 2008. Applicant has completed security clearance applications while in the military and he was familiar with the questions being asked in the questionnaire. Asked why he did not disclose the information, he testified that he does not remember completing the form. He also opined that he was likely intoxicated at the time because he is an alcoholic (now in recovery). (Gx. 1; Tr. 76 - 77)

## **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:

- (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

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

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 the SOR allegations under this guideline. The facts established reasonably 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

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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).

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*). Even after receiving a discharge of his debts in bankruptcy in 2008, Applicant neglected his finances and accrued the debts alleged in the SOR. As of the hearing, those debts have not been addressed in any meaningful way.

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.

AG ¶ 20(a) does not apply because the debts at issue are still unresolved and they were accrued in the past seven years. AG ¶ 20(b) only applies to the SOR 1.r allegation regarding bankruptcy. After relocating his family to pursue a military employment opportunity in 2008, Applicant experienced an unexpected period of unemployment when he retired from active duty. Under the circumstances, filing for bankruptcy protection was likely the best option for him. However, SOR 1.a - 1.q were accrued after Applicant's Chapter 7 discharge. He has not established that he has acted responsibly under his current circumstances, as most of his outstanding debts have not been addressed.

Applicant did not present any information that would support application of AG ¶¶ 20(c), 20(d) or 20(e). On balance, available information is not sufficient to mitigate the security concerns raised by the Government's information about Applicant's finances.

## Personal Conduct

Available information shows that Applicant deliberately withheld from his EQIP information about his finances that was relevant and material to an informed assessment by the Government about his suitability to hold a security clearance. A security is, therefore, raised about Applicant's judgment, reliability, and trustworthiness, as expressed at AG ¶ 15:

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, the disqualifying condition at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies here.

Applicant knew or should have known that he had numerous delinquent or past-due debts that arose after his Chapter 7 bankruptcy discharge. The only financial problem Applicant disclosed in his EQIP was his Chapter 7 bankruptcy. Asked why he did not list any other debts, Applicant had no other explanation than he was likely intoxicated when he completed his EQIP. That Applicant was intoxicated does not preclude a finding that he intended to withhold information from his EQIP.

I have also weighed the pertinent AG ¶ 17 mitigating conditions<sup>7</sup> and find that none apply. Applicant did not disclose any of his recent debts until he was confronted about them in his January 2013 interview with a Government investigator. Although Applicant claims he did not know about the debts until then, he also has acknowledged that he did not pay attention to his debts and expected his wife to pay the bills. But this

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<sup>7</sup> AG ¶¶ 17 (a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*); 17 (b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*); and 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*).

willful neglect of his finances does not preclude a conclusion that he knew he had past-due debts that he should have disclosed in his EQIP. Applicant previously completed security clearance applications while in the Air Force and was aware of the need for this information. He also did not take any action to correct his non-disclosures before being interviewed. On balance, the security concerns raised by Applicant's unwillingness to be fully candid about adverse information in his background have not been mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is an honorably-discharged retired veteran and has been gainfully employed in the defense industry since leaving the military in 2008. However, this positive information is not sufficient to resolve the doubts about his suitability for a clearance that have been raised by the financial and personal conduct security concerns. Because protection of the national interest is the principal focus of these adjudications, any remaining 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.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the foregoing, 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.

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MATTHEW E. MALONE  
Administrative Judge