



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 14-05934

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

06/27/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not meet 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 February 3, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to classified information, required in connection with his employment at 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>

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

On April 5, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On July 17, 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 October 29, 2015, and had 30 days from the date of receipt to object to the admissibility of the Government's information and to submit additional information in response to the FORM. Applicant did not respond within the time allotted, and the record closed on November 28, 2015. The case was assigned to me on April 1, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$19,631 for eight delinquent or past-due accounts (SOR 1.a - 1.h). The debts at SOR 1.a and 1.d - 1.h are for delinquent student loans. The debts at SOR 1.b and 1.c are for delinquent credit cards. In his Answer, Applicant admitted owing the student loans, but averred he was making monthly payments on them. He denied the credit card debts, claiming he had paid them. (FORM, Items 1 and 2) In addition to the facts established by his admissions to the remaining allegations, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor, where he has worked since April 2005. Since 2001, he has worked as an accountant for various companies, with a period of unemployment from July 2004 to April 2005. Applicant holds bachelor's and master's degrees earned in 1999 and 2000, respectively. (FORM, Item 3)

When Applicant submitted his EQIP, he disclosed two credit card accounts that had become delinquent in 2010 but had been resolved in 2011. He also disclosed he had obtained credit counseling and a debt consolidation loan. (FORM, Item 3)

A credit bureau report obtained in 2012 showed that Applicant was paying his student loan accounts as required. It also documented the use of a credit counseling service. A credit report obtained by DOD in 2014 documented the debts at SOR 1.b and 1.c. Finally, a credit report obtained in April 2015 documented the delinquent student loan accounts as well as the credit card debts as alleged in the SOR. Applicant did not submit any information, either in response to the SOR or in response to the FORM, to support his claims of payment. (FORM, Items 4 - 6)

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<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 six exhibits (Items 1 - 6) proffered in support of the Government's case.

## 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 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

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<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.

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

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

Available information, including Applicant's admissions, is sufficient to support these SOR allegations. Applicant's denials of SOR 1.b and 1.c left the burden on the Government to present reliable information in support of those controverted issues of fact. The credit reports provided with the FORM satisfy that burden. The facts thus established reasonably 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*). By contrast, I have 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

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

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(c) is supported, in part, by Applicant's EQIP disclosure of credit counseling and an entry on the oldest credit report available. However, he did not provide sufficient detail about that credit counseling for it to have any probative value in mitigation. Applicant did not present any information that would support application of any of the other mitigating conditions. His debts must, therefore, be considered as current, as they have not been paid or otherwise resolved. Applicant did not sufficiently document his claims that he has paid or is now current on any of the debts alleged.

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). Applicant did not meet his burden of providing information that would support any of these factors. Without such information, unresolved doubts are established 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.h:           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.

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MATTHEW E. MALONE  
Administrative Judge