



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 07-11506
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 10, 2008

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s request for a security clearance is denied.

On June 2, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant’s request. On November 9, 2007, DOHA issued to Applicant a Statement of Reasons (SOR),<sup>2</sup> which specified the basis for its decision – security concerns addressed in the Directive under Guideline F (financial

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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> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

considerations) of the Revised Adjudicative Guidelines (AG).<sup>3</sup> More specifically, the government alleged that Applicant owed \$16,193 for seven delinquent debts (SOR ¶¶ 1.a - 1.g). On January 15, 2008, Applicant answered the SOR, admitted with explanation all but one (SOR ¶ 1.c) of the allegations therein, and requested a decision without a hearing.

On January 24, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)<sup>4</sup> in support of the government's preliminary decision. Applicant received the FORM on January 20, 2008, and was given 30 days to file a response to the FORM. He submitted nothing before the deadline, and the case was assigned to me on April 7, 2008.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's attachments to his response to the SOR, and the government's FORM and the exhibits therein, I make the following additional findings of fact.

Applicant is 39 years old and has been employed since December 2004 as a technical technician for a defense contractor. He and his wife have been married since November 1995. (FORM, Item 6)

Between April and July 2004, Applicant accrued \$942 in delinquent debt for four unpaid medical bills (SOR ¶¶ 1.a - 1.d), an unpaid satellite television account (SOR ¶ 1.e) and an unpaid cell phone account (SOR ¶ 1.f). (FORM, Item 7) The information he submitted with his response to the SOR showed the following:

- The debt listed in SOR ¶ 1.c was paid as required and is reported in error on Applicant's credit report.
- Applicant paid the debt listed in SOR ¶ 1.e in September 2006.
- Applicant paid the debts listed in SOR ¶¶ 1.a, 1.b, 1.d and 1.f in November 2007.

In December 2000, Applicant co-signed a car loan with his wife for a 2001 Nissan Pathfinder. The car was repossessed for non-payment of the loan on November 2, 2004. The car was re-sold on or about 10 days after the repossession. Since then,

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<sup>3</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>4</sup> In accordance with Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government's case.

Applicant has been obligated to pay \$15,251 as the difference between the resale and the amount remaining on the loan. He has not repaid this debt (SOR ¶ 1.g). In response to the SOR, he submitted an excerpt from his credit report on which he had circled the reference to the fact the debt had been charged off as a business loss. He appears to be claiming this means he is no longer responsible for the debt.

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>5</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, these factor 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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) at AG ¶ 18.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>6</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>7</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the

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<sup>5</sup> Directive. 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

government has a compelling interest in ensuring each applicant possesses the requisite judgement, 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>8</sup>

## Analysis

### Financial Considerations.

The security concern about Applicant’s finances, as stated in AG ¶ 18, is that

[f]ailure 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.

The government presented sufficient reliable information to support the allegations in SOR ¶¶ 1.a - 1.g that Applicant owed seven delinquent debts totaling \$16,193. The debts went unpaid for more than three years. These facts support application of the disqualifying conditions listed in AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

In response to the government’s information, Applicant showed the debt listed in SOR ¶ 1.c is invalid and that he has paid the debts listed in SOR ¶¶ 1.a, 1.b, 1.d - 1.f. The one remaining debt in SOR ¶ 1.g constitutes 95% of the debt alleged. Applicant appears to rely on the fact the debt has been charged off as justification for not paying the debt. He also draws attention to the fact he co-signed the loan for his wife to imply he should not be held accountable for the debt. Whereas the presence of unpaid debt is not per se disqualifying, the burden is on Applicant to show why the government should not be concerned by his failure to pay his debts. While it is laudable that he has paid or resolved the other debts, his payments were made after he was issued the SOR and cannot be considered as being made in good faith. Nor does the information Applicant presented regarding SOR ¶ 1.g justify his apparent inaction. Further, he has presented no information about his income and expenses that would provide a more comprehensive picture of how the repossession debt may or may not impact his overall finances.

As to SOR ¶ 1.c, the mitigating condition listed in AG ¶ 20(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) applies. However, there is no basis

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<sup>8</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

for application of any of the remaining mitigating conditions. On balance, Applicant has not mitigated the security concerns about his finances.

**Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 39 years old, has been married to the same person since 1995, and must be presumed to be a mature adult. However, there is no available information about his current finances, the reasons he did not pay the listed debts in the first place, or why he will not incur delinquencies in the future. Finally, there is no information in the record about his work performance, reliability, judgment or other facets of his life relevant to a suitability determination. A fair and commonsense assessment<sup>9</sup> of all of the information bearing on Applicant's finances shows there are still doubts about his ability to protect the government's interests as his own. Because the protection of the national interest is paramount in these determinations, these doubts must be resolved in favor of the national interest.<sup>10</sup>

**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
Subparagraph 1.a - 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

**Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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MATTHEW E. MALONE  
Administrative Judge

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<sup>9</sup> See footnote 5, *supra*.

<sup>10</sup> See footnote 8, *supra*.