



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 08-02909
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: Pro Se

December 23, 2008

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, his request for a security clearance is denied.

On May 19, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor, where he works as a fiber optics assembler. (Gx. 1) On March 7, 2008, after reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent to Applicant interrogatories to obtain clarification of and/or additional information about adverse information in his background.<sup>1</sup> After reviewing the results of the background investigation, including his response to the interrogatories (Gx. 2), DOHA adjudicators

<sup>1</sup> Authorized by DoD Directive 5220.6, Section E3.1.2.2.

were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to allow Applicant access to classified information. On July 23, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)<sup>3</sup> under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on September 24, 2008, and I convened a hearing on October 22, 2008. The parties appeared as scheduled. The government presented two exhibits (Gx. 1 and 2). Applicant testified and submitted one exhibit (Ax. A). I also left the record open after the hearing to receive additional relevant information. On October 30, 2008, I received a post-hearing submission, which is included in the record without objection as Ax. B. DOHA received the transcript of hearing (Tr.) on November 6, 2008.

### **Findings of Fact**

The government alleged in the SOR that Applicant owes approximately \$22,951 for 16 delinquent debts (SOR ¶¶ 1.a - 1.p); and that, according to a personal financial statement he submitted on April 29, 2008, he has a monthly net remainder after expenses (not including repayment of any delinquencies) of approximately \$282 (SOR 1.q). Applicant admitted all of the SOR allegations. As to SOR ¶ 1.q, the facts alleged are relevant to this decision; however, they are not potentially disqualifying in and of themselves. Rather, this allegation pleads relevant evidence of Applicant's current finances, which I have considered in reaching my decision. SOR ¶ 1.q is concluded for the Applicant. I have also made the following additional findings of relevant fact.

Applicant is 33 years old and has been employed by a defense contractor since January 2006. According to his e-QIP, Applicant was unemployed for about 18 months before he found his current job. Between February 2002 and June 2004, he worked as a forklift operator. He also served in the United States Army Reserve from October 1996 until August 2004. (Gx. 1)

Applicant was married from June 1997 until May 2004, when he and his wife were officially divorced. However, Applicant and his wife actually separated after only six months. They had one child together. Applicant also has three children by another woman. He pays about \$820 each month in child support. In 2005, two warrants for his arrest were issued for alleged failure to pay child support as ordered; however, it does not appear that he is currently in arrears on his child support obligations. (Gx. 1; Gx. 2; Tr. 42, 46)

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<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<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.

Applicant's financial difficulties date back to his failure to pay a telephone bill in 2001. (Tr. 17, 32) He acknowledges being "an idiot" in that he was not paying attention to his debts and spending habits. (Tr. 27) Around 2004, he developed blood clots that required hospitalization for about two weeks. At the time, he did not have health insurance and was turned down for Medicaid coverage. He admitted that he ignored his medical bills because he did not have the means to pay them. As a result, he still owes approximately \$6,543 for eight delinquent medical bills listed in SOR ¶¶ 1.d - 1.k. He has not contacted those creditors. (Gx. 2; Tr. 29, 35 - 36)

Of the remaining \$16,408 in delinquent debts listed in the SOR, Applicant owes approximately \$15,475 for a car repossession in 2007. (SOR ¶ 1.o) Applicant had financed a car and made about four payments before he went on extended travel for his job. He left the car with a girlfriend for her to use, and he sent her money with which he expected her to make the monthly payments. She used the car as her own, but did not make any payments. Applicant has not contacted this creditor; nor has he taken any steps to resolve this debt, which he estimates is now at least \$18,000. (Gx. 2; Tr. 29 - 30, 48 - 54)

The remaining seven delinquent debts total \$923. Applicant has repaid one of the debts, a \$169 corporate credit card account (SOR ¶ 1.m). The debt was satisfied only after it grew to over \$5,000 and his wages were garnished starting in November 2007. The last payment was scheduled for the Friday after this hearing. The remaining six debts total \$754, an average of \$126 per account. Applicant has not contacted any of these creditors or taken any action to resolve these debts. (Gx. 2; Ax. B; Tr. 32 - 33)

According to letters of reference from two co-workers and a supervisor, Applicant is a good, reliable employee. The letters presented do not reflect any knowledge of the adverse information about his finances. (Ax. A) Applicant loves his job and wants to resolve his finances because he now realizes the importance of good credit. (Tr. 18, 27 - 28)

## **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 Revised Adjudicative Guidelines (AG). 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

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

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 AG ¶ 18 (Guideline F - Financial Considerations).

A security clearance decision is intended 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>

## 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.

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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*; Revised Adjudicative Guidelines, ¶ 2(b).

The government presented sufficient information to support all of the allegations in SOR ¶ 1. Available information also shows Applicant has not paid or resolved any of the debts listed therein. Some of the debts have been delinquent for up to seven years. Applicant acknowledged willful neglect of his finances and has yet to contact any of his creditors to pay or resolve even the most modest of his debts. He also demonstrated poor judgment regarding his car loan obligation. The record in this case requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), at AG ¶ 19(b) (*indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*) and at AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant has not presented any information that would support application of any of the mitigating conditions at AG ¶ 20. His financial problems are recent, in that they remain unresolved. As to his medical debts, they arguably were due to circumstances beyond his control. However, because he has decided to ignore them, he may not benefit from the mitigating condition at AG ¶ 20(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*). Applicant has not made a good-faith effort to resolve his debts. In fact, the one debt he has paid was through involuntary wage deductions for a delinquent corporate credit card. He has not sought any financial counseling or other assistance that would help him improve his personal financial condition. In summary, Applicant has failed to overcome the adverse information 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 33 years old and presumed to be a mature adult. However, he has demonstrated since at least 2001 a complete disregard for his personal financial affairs, including at times his child support obligations. While there is positive information about his job performance, there is no positive information about his current finances or to show he knows how to manage his money better now than before. A fair and commonsense assessment<sup>8</sup> of all available information shows Applicant has not satisfied the doubts about his suitability for access to classified information that are established by the results of the government's investigation. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>9</sup>

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<sup>8</sup> See footnote 4, *supra*.

<sup>9</sup> See footnote 7, *supra*.

## 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
Subparagraph 1.a - 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

## Conclusion

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

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MATTHEW E. MALONE  
Administrative Judge