



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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SSN: ----- ) ISCR Case No. 08-05451  
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Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 14, 2009

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**Decision**

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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 December 3, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job 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 for access to classified information. On December 31, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging

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

facts which raise security concerns addressed in the revised Adjudicative Guidelines (AG)<sup>2</sup> under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on March 12, 2009, and I convened a hearing on March 31, 2009. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5), which were included in the record without objection. Applicant testified on his own behalf. I left the record open after the hearing to receive additional relevant information from the Applicant. DOHA received the transcript of hearing (Tr.) on April 10, 2009. Applicant's post-hearing submission was received on April 16, 2009, and included in the record without objection, as Ax. A.

### **Findings of Fact**

The government alleged in the SOR that Applicant owes approximately \$41,000 for 23 delinquent debts (SOR ¶¶ 1.a - 1.w). Applicant admitted all of the SOR allegations. He also provided explanatory information with his response. In essence, he asserted his debts were the combined result of job lay-offs, medical problems, and a marital separation. In addition to the facts established through Applicant's admissions, after reviewing the pleadings, the transcript, and the parties' exhibits, I have made the following findings of relevant fact.

Applicant is a 30-year-old electronics engineer for a large defense contractor, where he has worked since October 2007. He has worked since at least August 2000 in the information technology and electronics industry. However, he was unemployed due to layoffs between January and May 2007, and in September 2007. (Gx. 1) Appellant testified he was also laid off twice in 2000. (Tr. 29)

Applicant and his wife have been married since May 2001. They separated in 2007, but reconciled in March 2009. (Tr. 37) They have two children, ages 6 and 3. (Gx. 1) Applicant has earned a bachelor of science degree in electronics engineering and a master's degree in business administration. He is currently studying for his master's degree in information systems. (Gx. 1; Tr. 5, 57 - 58) He has funded his education through a combination of public and private student loans. He estimates that when he completes his current master's program in 18 months, he will owe about \$60,000 in student loans. The loans are currently in forbearance, with about half of the loans accruing interest. (Gx. 3 - 5; Tr. 80)

When he submitted his e-QIP in December 2007, Applicant disclosed that he owed several delinquent or past due debts. He also disclosed at least one judgment against him and his mother for an unpaid loan he co-signed with her. Applicant used a credit report he obtained in order to provide the detailed information he disclosed. (Gx. 1; Tr. 81) The subsequent background investigation yielded information about the 23

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<sup>2</sup> The revised Adjudicative Guidelines were approved by the President on December 29, 2005, and were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they supercede the guidelines listed in Enclosure 2 to the Directive.

delinquent debts, judgments and/or repossessions, which are listed in the SOR. (Gx. 2; Gx. 3) However, the debts listed at SOR ¶¶ 1.h and 1.s are the same account.

Applicant has attributed his unpaid debts to his periods of unemployment in 2000 and 2007. It is unclear when he was unemployed in 2000, and there is a discrepancy between the employment record he listed in his e-QIP and the dates he gave during his testimony. Applicant also asserted that he accrued his debts when he and his wife were separated in October 2007 through early 2009. He moved to the city where he and his family now live, while his wife and children remained in their previous residence. Applicant had to support two residences from about October 2007, when he moved to his current locale, until March 2009. (Tr. 79)

Applicant's wife has suffered a variety of medical problems since 2004. These include a blood disorder for which she receives blood platelet injections, and an eye problem that resulted in a corneal transplant just before this hearing. (Ax. A) She has been unable to work for periods of time, but Applicant's health insurance has covered most of the costs of her treatments. (Tr. 45 - 46)

At least since he completed his e-QIP in 2007, Applicant has been aware that he has extensive unpaid debts. In July 2008, he approached the Consumer Credit Counseling Service (CCCS) for help in managing his money and negotiating repayment terms with his creditors. At that time, he had a negative monthly cash flow (his expenses were \$164 more than his income) and he could not enroll in the CCCS program. (Gx. 2) CCCS recommended several actions he could take to improve his monthly balance sheet and position him for a repayment program. In February 2009, Applicant and CCCS produced a budget that showed he now has a positive monthly cash flow of \$1,670. Applicant attributed the change to taking in his brother and sister-in-law as tenants who are now sharing the expenses and paying rent. However, Applicant's wife is no longer working, thus removing from the balance sheet her \$1,300 monthly income. (Ax. A; Tr. 71 - 72)

Applicant has taken out student loans for his two previous degrees and for his current course of study. For some of his privately funded student loans, he borrowed as much as \$5,000 more than he needed for tuition and fees. The excess was returned to him after he paid his tuition and related costs. But rather than pay down his student loans, he asserted he kept the "refunds" for expenses and to pay off debts. (Tr. 40 - 43, 59 - 60) Applicant did not present any information to support this claim.

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>3</sup> for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and

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<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the revised 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, by itself, conclusive. 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).

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.

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

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

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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 information to support the allegations in SOR ¶¶ 1.a - 1.w. The facts thus established show that Applicant owes approximately \$41,000 in delinquent debts dating back to at least 2002. However, the debts in SOR ¶¶ 1.h and 1.s are the same account. Applicant has been aware of his delinquent debts since he submitted his 2007 security clearance application. To date, the debts listed in the SOR are still unpaid or otherwise resolved. Applicant insists he is now able to pay his delinquent debts, but he has offered no information that shows he has actually begun making payments. Further, he has increased his overall debt by taking student loans in excess of the costs of his ongoing graduate education. He claimed he is using the monies returned to him by the school to pay down his consumer debt, but has not documented his claim. In another 18 months, he will likely owe more than \$60,000 in debt for his student loans by themselves. The record requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response to his financial problems, Applicant tried in 2008 to enroll in a repayment plan with CCCS, but it was determined his monthly finances would not allow him to take advantage of their services. To his credit, he adjusted his spending and took on renters to defray his household expenses. According to a second CCCS balance sheet in February 2009, Applicant had sufficient funds to devote to a meaningful repayment plan. However, Applicant has acknowledged that the figures used included his wife's income, which, as of the hearing, was no longer available due to her medical problems. In most cases, the foregoing might support application of the mitigating conditions 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*) and AG ¶¶ 20(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*).

As to AG ¶ 20(c), it is to Applicant's benefit that he is enrolled in a CCCS program. But there is no track record of action here that is likely to yield tangible results. Despite being allowed extra time after the hearing to do so, he has not shown that he is, in fact, making payments to his creditors through the CCCS. Nor has he shown that he has taken other tangible action to resolve his debts or improve his overall financial health. He has demonstrated that he is adding to his overall debt load through his student loans, but has not shown he has devoted that excess either back to the loans themselves or to other delinquent accounts. As to AG ¶ 20(b), it is true that his wife has had medical problems which probably interrupted her income from time to time. But Applicant admitted he has had medical insurance to cover most of his wife's medical costs and he has not shown that his debts or his inability to resolve them stemmed from his wife's medical issues. Nor has he shown that his periods of unemployment were to blame. He claimed that he was unemployed for about a year when he was laid off in

2007, but his security clearance application shows he was unemployed, at most, for five months. Nor does the record support his claim he was unemployed in 2000. On balance, the information he presented is insufficient to support application of the aforementioned mitigating conditions.

### **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 30 years old and presumed to be a mature adult. There is no available information about his reliability or trustworthiness that would support a prediction that he will begin paying off his past due debts or that his finances have improved so as to avoid more financial problems in the future. A fair and commonsense assessment<sup>7</sup> of all available information bearing on Applicant's finances and truthfulness shows he has failed to address satisfactorily the government's doubts about his ability or willingness to protect the government's interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>8</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
Subparagraphs 1.a - 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t - 1.w:	Against Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge

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<sup>7</sup> See footnote 3, *supra*.

<sup>8</sup> See footnote 6, *supra*.