



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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SSN: ----- ) ISCR Case No. 08-07822  
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Applicant for Security Clearance )

**Appearances**

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

March 30, 2009

**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 January 29, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) 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 allow Applicant access to classified information. On October 10, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security

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

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 February 2, 2009, and I convened a hearing on February 25, 2009. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5).<sup>3</sup> Applicant testified and submitted three exhibits (Ax. A - C), which were admitted without objection. I left the record open after the hearing (Tr. 56 - 57) to allow Applicant to present additional relevant information. On March 3, 2009, I received his post-hearing submission, which has been included in the record without objection as Ax. D. DOHA received the transcript of hearing (Tr.) on March 4, 2009.

### **Findings of Fact**

The government alleged in the SOR that Applicant owes approximately \$43,104 for 17 delinquent debts (SOR ¶¶ 1.a - 1.q). Applicant admitted all of the SOR allegations, except for the debts alleged in SOR ¶¶ 1.n, 1.o and 1.q. The basis for his denials is that he does not recognize the accounts as his. (Tr. 30 - 31) In addition to the facts entered through Applicant's admissions, I have made the following findings of relevant fact.

Applicant is 42 years old and has been employed by a defense contractor since January 2005. From May 1995 until November 2004, he worked as a mechanic for a large food processing and distribution corporation. However, the plant where he worked closed and he was laid off. He was hired by his current employer after three to six months<sup>4</sup> of unemployment and working odd jobs. Applicant spends most of his time away from home as part of a team that installs security systems at military bases and other federal facilities. He is paid per diem for meals and incidentals, and he is reimbursed for his travel and lodging expenses. (Tr. 45 - 47)

Applicant has been married twice. His first marriage began in September 1986 and ended through divorce in July 1995. Applicant has been paying child support of \$600 each month since the divorce, but this obligation will end in about May 2009. He married his current wife in May 2007. (Gx. 1) She recently lost her job at a printing company and now works part-time as a babysitter. She currently brings home about \$500 each month. When Applicant completed a personal financial statement (PFS) in September 2008, her monthly income was about \$800. Applicant estimates that he and his wife have about \$250 remaining each month after expenses, which does not include

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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.

<sup>3</sup> As provided for by section E3.1.10, I excluded Gx. 3 and 4, because they did not meet the authentication requirements of Directive Enclosure 3, ¶ E3.1.20. (Tr. 18 - 22)

<sup>4</sup> Applicant testified that he was unemployed for about a year (Tr. 40); however, the SF 86 (Gx. 1) and Summary of Interview (Gx. 2) show he was unemployed for between three and six months.

payment to any of the debts listed in the SOR. Their monthly expenses include making minimum payments on four credit cards in his wife's name which have a current total balance of about \$14,000. Applicant insists these accounts are current and that the high balances were incurred when his wife had to recover from Hurricane Katrina. (Tr. 33 - 39; Gx. 2)

Applicant claimed to have had good credit and to have been current on his debts through the time he was laid off in 2004. (Tr. 29 - 30). However, he also acknowledged being financially overextended before he lost his job. Indeed, some of the debts listed in the SOR became delinquent before he was unemployed. (Tr. 41 - 42, 48 - 52) Applicant made about \$38,000 annually in his previous job. He now makes between \$60,000 and \$65,000 annually. He has not paid or otherwise resolved any of the debts listed in the SOR, but he estimates he has about \$25,000 in a 401(k) retirement account. He is willing to use his 401(k) funds to pay down his delinquent debts. (Tr. 39 - 52) One of Applicant's creditors (SOR ¶ 1.c) has offered to settle a \$10,392<sup>5</sup> delinquency for \$3,088.33 or \$6,176.65 depending on which payment option he chooses. (Ax. A) Applicant intends to accept the offer but has not shown that he has, in fact, acted on it.

Applicant has a good reputation at work. He now serves as a crew leader and is well regarded for his work ethics and time management. (Ax. B) His project manager and a government customer have praised his reliability, trustworthiness and discretion in handling sensitive information. (Ax. C and D)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</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 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

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<sup>5</sup> This debt has grown through interest and fees from \$6,176 at the close of Applicant's background investigation.

<sup>6</sup> Directive. 6.3.

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>7</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>8</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>9</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 information to support all of the SOR allegations. Applicant has incurred a significant amount of delinquent debt since at least 2004. He was overextended before losing his job in 2004 and some of the debts listed were already delinquent or well past due when he became unemployed. Further, since January 2005, he has been earning roughly 40% more each year than he did before he

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<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

was laid off. He took no action to pay or resolve his delinquencies during the more than two years before he re-married. His previous delinquencies are still unresolved because he is helping to pay off \$14,000 of credit card debt in his wife's name. The foregoing requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), 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 AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant has not presented information that would support application of any of the mitigating conditions at AG ¶ 20. His financial problems are recent, in that they remain unresolved. While his relatively brief period of unemployment may have exacerbated his credit problems, it did not cause them. Further, he has had more than three years in which to use his increased income to pay at least some of his debts (SOR ¶¶ 1.b, 1.l, 1.j, 1.n, and 1.q list debts of less than \$200 each). Applicant has not shown how or that he will resolve his past delinquencies while repaying his wife's current high credit card balances. Accordingly, he has failed to mitigate the government's 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 42 years old and presumed to be a mature, responsible adult. He has been successful in his current job and he is well-regarded by his supervisors and by his government customers. However, his inaction regarding his past debts and his current obligation to his wife's debts make it unlikely his finances will improve in the near future. In sum, available positive information about Applicant's job performance is insufficient for me to conclude that he has satisfied the doubts about his suitability for a clearance raised by the government's information about his finances. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<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
Subparagraphs 1.a - 1.q:	Against Applicant

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<sup>10</sup> See footnote 7, *supra*.

## **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge