



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 08-11582
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 15, 2010

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is granted.

On or about May 29, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required in connection with his work for a defense contractor. In response to questions about his finances, Applicant disclosed that he owed a significant amount of delinquent debt. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories<sup>1</sup> to obtain clarification of, and/or additional information about, potentially disqualifying information in his background. Based on the results of the background investigation, including Applicant's response to the interrogatories, DOHA adjudicators

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), 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 him access to classified information. On April 28, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the revised Adjudicative Guidelines<sup>3</sup> under Guideline F (financial considerations).

On June 3, 2009, Applicant responded to the SOR and requested a hearing. The case was assigned to me on July 24, 2009, and I convened a hearing on August 26, 2009. The parties appeared as scheduled. The government presented four exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 - 4. Applicant testified and presented one exhibit, which was admitted without objection as Applicant's Exhibit (Ax.) A. DOHA received the transcript of hearing (Tr.) on September 4, 2009. I left the record open after the hearing (Tr. 52 - 53) to give Applicant time to submit additional relevant information. On September 10, 2009, I received Applicant's post-hearing submission. It has been admitted into the record without objection as Ax. B.

### **Findings of Fact**

Under Guideline F, the government alleged that Applicant owes approximately \$39,608 for 14 delinquent debts (SOR ¶¶ 1.a - 1.n) that, as of March 26, 2009, remained unpaid. Applicant admitted without explanation all but one (he denied SOR ¶ 1.e) of these allegations. In addition to the facts established through his admissions, I have made the following findings of relevant fact.

Applicant is 50 years old and is seeking a security clearance in connection with his employment with a defense contractor as a facilities technician, a position he has held since May 2008. Applicant held a similar job, albeit not with a defense contractor, from October 1998 until November 2005, when he lost his job when the plant where he worked closed. He was subsequently unemployed until July 2006, when he found work as a site manager for an architectural firm. However, that job paid about 20% less than before. Applicant was laid off again in August 2007, and he was unemployed until he obtained his current position. (Gx. 1)

Applicant has been married twice. His first marriage was brief (August 1978 - March 1979) and ended in divorce. He re-married in April 1982. He and his second wife had one child, now age 24, but divorced in August 2004. In late 2005, he and his ex-wife reconciled but did not remarry. Unfortunately, she died of colon cancer in February 2008. When they divorced in 2004, Applicant was left with most of the marital debts; however, his subsequent job loss in 2005 made it difficult for him to keep up with regular monthly obligations, such as rent, utilities, and car payments, much less pay off credit cards and other discretionary obligations. His ex-wife worked for the same

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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 take precedence over the guidelines listed in Enclosure 2 to the Directive.

company and also lost her job in 2005, so she could not help pay their debts either. (Tr. 24 - 27)

When Applicant obtained his current job, he drove a Ford pickup truck. He lives about 75 miles from his work site, so he was required to drive about 150 miles round trip five days a week. At the time, high gas prices, together with a \$400 monthly car loan payment and insurance meant that he was paying about \$1,000 each month to get back and forth to work. Around October 2008, he decided to let his truck be voluntarily repossessed. In its place he bought a used car that gets better gas mileage and costs less to insure. The debt alleged at SOR ¶ 1.i (\$7,280) represents his remaining debt after the truck was resold. (Tr. 27 - 28)

Applicant owes four delinquent medical bills totaling about \$2,125. (SOR ¶¶ 1.a - 1.d) He incurred those bills while he was unemployed and did not have any medical insurance. The actual total of the services was about \$10,000. He has been making payments on two of those debts. (Tr. 35 - 36; Ax. B) Additionally, some of the debts alleged in the SOR are duplicates. SOR ¶ 1.l (\$4,732) is a duplicate of SOR ¶ 1.e (\$4,733). Both are collection agencies for the same credit card company, with whom Applicant had only one account. (Tr. 9, 37 - 38) SOR ¶ 1.n (\$5,120) is a duplicate of SOR ¶ 1.j (\$2,332). The former creditor is a collection agency for the latter creditor, who was the original party in interest. The higher amount of the SOR ¶ 1.n debt is for penalties and interest added on by the collection agency.

The debt listed at SOR ¶ 1.f (\$3,341) is the remaining amount from the purchase of a television Applicant financed before he was laid off in 2005. He made about \$1,000 in monthly payments as required for about a year before the account became delinquent. SOR ¶ 1.g alleged a \$187 debt for an unpaid phone bill Applicant did not know was delinquent until he received the DOHA interrogatories in March 2009. He has since settled this debt for \$98. (Tr. 39)

The debt at SOR ¶ 1.h is for the loan Applicant obtained in 2004 to buy a motorcycle. As of the hearing, he was about six months behind on the \$250 monthly payment required. He has been trying without success to sell the bike since about September 2008. At that time, Applicant, who had been living with a roommate, moved into his own place, but he was unable to find accommodations he could afford and pay the motorcycle loan payment. Applicant acknowledged the probability the motorcycle will be repossessed. (Tr. 34, 40 - 42)

The debt at SOR ¶ 1.k (\$5,998) is for a credit card account Applicant admitted is accurately alleged. He relied on that card when he became unemployed. The debt at SOR ¶ 1.m (\$89), which has been paid, was for a cable television account that went unpaid when Applicant moved in August 2006. Applicant was unaware the account had not been paid until he received the DOHA interrogatories. (Gx. 3; Tr. 45)

When Applicant responded to DOHA interrogatories in March 2009, he submitted a personal financial statement (PFS) that showed he had about \$155 left over after expenses each month. In May 2009, he received a raise that equates to another \$200 per month. His current income and expenses reflect a positive cash flow of about \$330.

(Gx. 2; Ax. A; Tr. 46 - 47) He has contacted several debt management firms as well as the regional Consumer Credit Counseling Service (CCCS) where he lives. The former were not effective and the latter recommended that he file for bankruptcy protection, but he wants to try to repay or otherwise resolve his debts. (Tr. 29, 51 - 52)

Applicant enjoys an excellent reputation at work. His co-workers, supervisors, and the military customer he supports all praise his reliability, hard work, and integrity. Longstanding personal references also expressed similar support for Applicant's trustworthiness and character. (Ax. B)

## 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 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 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. 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 prove controverted facts alleged in the SOR.

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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).

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 to classified information 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.

The government presented sufficient information to support the allegations in SOR ¶ 1.a - 1.n; that is, that Applicant accrued almost \$40,000 in delinquent personal debt that was unresolved as of March 2009. Applicant admitted all but one of the allegations, and has acknowledged that most of his debts remain unresolved. However, the same information also shows that the actual amount of his debt, after duplicate allegations are removed, is about \$29,756. Nonetheless, 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*). As to AG ¶ 19(a), the information reflects only an inability, and not an unwillingness, to pay his debts.

By contrast, available information shows that Applicant and his ex-wife were both working for the same company that laid them off in 2005 after they had divorced in 2004. They were unable to pay off their marital debts, and Applicant eventually accrued additional debt as his period of unemployment lasted for about nine months. Applicant's loss of employment also resulted in a loss of medical insurance. He incurred about \$10,000 in medical costs, about \$2,000 of which remains unresolved. When Applicant again found work, it paid about 80% of his previous job. In August 2007, he was again laid off and was unemployed for about 10 months before he was hired by his current employer in May 2008. Since then, he has been successful in his work and has

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

improved his monthly finances. After receiving a raise in May 2009, his net monthly remainder doubled. Although Applicant has not made much progress in repaying his debts, he has acted (albeit with mixed results) to improve his current finances. When he was hired in 2008, he was faced with the increased expenses of a long daily commute. He incurred additional debt by allowing his vehicle to be repossessed, then buying a car that is less expensive to operate and insure. Applicant has also consulted with CCCS and other debt management firms to resolve his debt. CCCS advised him to seek bankruptcy protection, but he feels it would be irresponsible to do so.

Based on all of the foregoing, 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*) apply.

The ongoing presence of significant unpaid delinquent debt does not automatically mean Applicant should be disqualified. The amount of debt at issue certainly raises the possibility that Applicant could resort to illegal means to get money to pay his debts. But, however large or small the total debt, the analysis here must also consider Applicant's response to his adverse financial circumstances and his overall approach to money management. Applicant established that he has been paying what he can since his income returned, and that he has made difficult decisions to try to generate greater cash flow. Available information also shows that he has a positive monthly cashflow that will enable him to continue making payments. On balance, I conclude that the security concerns about his unpaid debt are mitigated.

### **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 50 years old and presumed to be a mature, responsible adult. He has a solid reputation, at work and among his friends, as a person of solid character and reliability. Applicant was candid and forthcoming about his finances in his application for clearance, and in his response to DOHA interrogatories. There has been no financial or other misconduct on his part, and his difficulties have been limited to two periods of unemployment and subsequent recovery. Applicant's testimony at the hearing was likewise straightforward. His candor, reputation, and the actions he has taken to date, support his claimed intent to satisfy his debts. His continued employment and his positive cashflow make it likely that he will continue to resolve his debts and that he will not incur new unpayable debts. A fair and commonsense evaluation of this record shows that the security concerns raised by Applicant's credit history are mitigated, and his finances do not put him at risk of acting contrary to the national interest.

### **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

Subparagraphs 1.a - 1.n: For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge