



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-00041
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel

For Applicant: *Pro se*

July 26, 2010

**Decision**

O’BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 14, 2008 to request a security clearance required as part of his employment with a defense contractor (Item 5). 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 that it is clearly consistent with the national interest to grant Applicant’s request.<sup>1</sup>

On January 19, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Item 1) that specified the basis for its decision: security concerns addressed in the

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

Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).

Applicant received the SOR on April 5, 2010. He answered the SOR on April 13, 2010, and requested a decision without a hearing. In his Answer to the SOR, Applicant admitted 14 allegations, and denied the remaining 14 allegations. DOHA Department Counsel submitted a file of relevant materials (FORM)<sup>2</sup> in support of the government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on May 7, 2010, and he received it on May 13, 2010. He was given 30 days from the date he received the FORM to file a response. He did not respond. The case was assigned to me on July 20, 2010, for an administrative decision based on the record.

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant is 45 years old. He married twice. The first marriage ended in divorce. He separated from his second wife in 2008. He is the father of a teenaged son who resides with him. Applicant earned a technical certificate in 1993, and worked as an aircraft technician for a large commercial airline from 2000 to 2005. He then obtained his current job as a quality auditor in April 2005. (Items 5, 7)

The 28 SOR debts, which appear in Applicant's credit reports of August 2008 through October 2009, total \$18,288. Several of the debts became delinquent in 2003 and 2004. Applicant denied half of the debts in the SOR. Other than one debt, he failed to explain the reasons for his denials. Regarding the one debt that he denied, he noted that he consulted the company, but failed to provide any further details. In his response to DOHA interrogatories, he noted that he was "working to identify" several creditors, and that he planned to try to pay the smaller debts until he could afford to set up payment plans for the larger debts. He has not made payments on any of the debts, including the 13 debts that are approximately \$100 or less. (Items 4, 6, 8, 9, 10, 11)

In January 2005, Applicant was laid off from his job with a major airline, where his annual salary was \$75,000. He could have retained his position if he had moved to another state. However, his wife was about to graduate from nursing school. He decided to remain in his home state and accept a lower income, because his wife's salary as a nurse would compensate for the loss in his income. From January to April 2005, he was unemployed. He relied on his severance package and unemployment insurance to support his family, which consisted of his wife, son, and his wife's two

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<sup>2</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included 11 documents (Items 1 - 11) proffered in support of the Government's case.

children.<sup>3</sup> In April 2005, he obtained a position with his current employer, at an annual income of \$40,000. Applicant's wife handled the household finances. (Item 7)

In September 2005, Applicant's spouse was arrested on a charge of prescription fraud, and was placed on reduced pay pending the outcome of her case. She was found guilty in February 2006, and lost her job and her nursing license. One year later, she obtained a clerical job at a salary of \$20,000. These events took a toll on Applicant's marriage, and in May 2008, they separated. At that time, he was aware that they had debts, but did not know the extent of their delinquencies. (Item 7)

In November 2008, at his security interview, Applicant stated that, once his divorce was final, he was considering retaining assistance from a credit counseling company. At the time, Applicant had a monthly net income of \$2,800 and expenses of \$2,300, leaving him with a monthly net remainder of \$500. In January 2009, he consulted a credit counseling company. The financial statement developed by the company showed his net income was \$2,500 and expenses of \$2,800, leaving a monthly shortfall of \$300. Applicant did not implement the company's plan because he could not afford the monthly payments. He submitted an updated personal financial statement with his Answer. It shows income of \$2,300, and expenses of \$2,110 leaving a monthly remainder of \$190. (Items 4, 6, 7)

### **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 AG.<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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).

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

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<sup>3</sup> Applicant provided conflicting information the number of children he supports. In his Answer, he noted that he supported himself and two teenaged sons. However, in his April 2009 interrogatory response, he stated that he was providing support for "my teenage son, who will grad [sic] In 2010."

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

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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 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. Therefore, 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 his 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

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

Failure 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence contained in the FORM shows that Applicant started to have delinquencies in 2003. He admits that he is unable to pay his debts. His seven-year history of failing to meet his financial obligations supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast

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

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

doubt on the individual's current reliability, trustworthiness, or good judgment

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's failure to pay his debts did not occur in the distant past, because the debts are still delinquent. He has not shown that he is in a position where his debts are unlikely to recur. His unresolved financial situation casts doubt on his reliability, and AG ¶ 20a cannot be applied.

AG ¶ 20(b) is relevant because Applicant's wife committed prescription fraud and, as a result, the family was deprived of her income when she lost her nursing license and position. These are circumstances that Applicant could not have predicted. However, to be applicable, this mitigating condition requires that the person act responsibly under the circumstances. Applicant acted responsibly when he took a step toward debt resolution by contacting a consumer credit company. However, he failed to follow through on the company's plan to resolve his debts, or to create and implement his own plan. As a result, his debts remain unpaid with no plan in place to resolve them. AG ¶ 20 (b) applies in part.

Applicant's initial contact with a consumer credit company implicates AG 20(c). However, it cannot be applied because Applicant has not set up a payment plan for any of his debts nor brought the problem under control. For the same reasons, mitigation is unavailable under AG ¶ 20(d). The record shows no evidence that Applicant has paid any of the debts alleged in the SOR, including the 13 small debts that are less than \$50. Applicant has not mitigated the concerns about financial considerations.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

(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

Applicant is 46 years old and presumed to be a mature, responsible adult. He accrued significant debt since 2003. In response to the government's concerns, he offered proof that he has contacted a consumer credit company, which developed a plan to resolve his debts. However, he could not afford to retain the company. Although half of the SOR debts are approximately \$100 or less, he has not paid any of them or initiated a plan to do so. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not demonstrated the good judgment and trustworthiness required in those who protect the government's interests. 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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraphs 1.a. – 1.bb.	Against Applicant

### **Conclusion**

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

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RITA C. O'BRIEN  
Administrative Judge

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