



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-02800

**Appearances**

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

July 26, 2010  
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**Decision**  
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MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is denied.

On July 26, 2007, 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) issued to Applicant a set of interrogatories<sup>1</sup> to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to continue

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

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

Applicant's access to classified information. On December 23, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guideline (AG)<sup>3</sup> for financial considerations (Guideline F) and personal conduct (Guideline E).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 1, 2010. Pursuant to a Notice of Hearing issued on April 6, 2010, I convened a hearing in this matter on April 28, 2010. The parties appeared as scheduled. The Government presented 13 exhibits (Gx. 1 - 13), which were admitted without objection. Applicant testified on his own behalf. With his response to the SOR (Answer) he attached six documents. The Government waived objection and Applicant's attachments were admitted as Applicant's Exhibits (Ax.) A - F. Applicant submitted at hearing three additional documents, which were admitted without objection as Ax. G - I. I also left the record open after the hearing to give Applicant time to submit additional relevant information. DOHA received the transcript of hearing (Tr.) on May 6, 2010. The record closed on May 14, 2010, when I received Applicant's post-hearing submission, which has been admitted over Department Counsel's objections<sup>4</sup> as Ax. J.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant accrued approximately \$95,203 for 21 delinquent debts (SOR 1.a - 1.u). Under Guideline E, the Government alleged that Applicant was a co-defendant in a civil suit brought by the Securities and Exchange Commission (SEC) in August 2008. (SOR 2.a)<sup>5</sup> The SEC had claimed that, by deliberately issuing misleading press releases about a company for which he was the chief executive officer (CEO), Applicant manipulated the value of shares of that company. The suit also alleged that Applicant received proceeds of the sale of the company's stock through an unregistered distribution. In the SOR, the Government also alleged that Applicant deliberately lied to the SEC when he responded to the civil suit by claiming he had nothing to do with the press releases and had no knowledge of them. (SOR 2.b)

In response to the SOR, Applicant denied with explanation the allegations in SOR 1.b, 1.c, and 1.u. He admitted with explanation the debts alleged at SOR 1.a, 1.d - 1.t, and 1.v. He also admitted the allegation in SOR 2.a, but denied the allegation in

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<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> Ax. J contains 20 separate documents totaling 54 pages. Department Counsel posed objections to two letters (one from Applicant) that, in part, address facts related to the allegations in SOR 2.a and 2.b. The basis of Department Counsel's objections was that these documents discuss factual matters that were not already in the record at the close of Applicant's hearing or seek to re-open the record as to SOR 2.a and 2.b. Department Counsel's objections are overruled. I have considered all of the information submitted in Ax. J, assigning its contents appropriate weight in context with all of the other information admitted at the hearing.

<sup>5</sup> Also cross-alleged under Guideline F at SOR 1.v.

SOR 2.b. His admissions are incorporated herein as facts. Having reviewed the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 46 years old and employed by a defense contractor in a position that requires a security clearance. Applicant has worked for his current employer since February 2010 after working for another contractor as a national security analyst from April 2007 until February 2010. (Gx. 1) His co-workers and other associates who have known him over the past ten years characterize Applicant as a man of good character and integrity, who is also reliable, knowledgeable, and hardworking. Several professional sources from Government agencies and private companies praised him for his expertise, good judgment, and commitment to his work. (Ax. J)

Applicant served on active duty in the United States Air Force from November 1984 until December 2004, when he retired under honorable conditions with the rank of Master Sergeant. He has held a security clearance since about 1989. (Gx. 1) Records of his military service indicate his performance in the Air Force was outstanding. Among his many personal awards were multiple Air Force Achievement Medals, multiple Air Force Commendation Medals, multiple Meritorious Service Medals, and numerous other citations and letters of commendation. (Ax. J)

Applicant was married from November 1984 until February 2006, when he and his ex-wife divorced. They have 12 children ranging in age from 5 to 24. He and three of his children now live with his fiancée and her two children. Applicant's divorce decree initially obligated him to pay off their marital debt, relinquish the marital residence to his ex-wife (who subsequently sold it), and to pay alimony of \$1,100 and child support of \$3,516 each month. In August 2008, the decree was modified. Applicant now pays his ex-wife alimony of \$100 each month and child support of \$2,400. After falling behind in his payments for a short time due to unemployment, Applicant paid his arrearages and is now current on all of his support obligations. (Gx. 2; Ax. J; Tr. 74 - 75)

From December 2004 until November 2006, Applicant served as the CEO in a small business owned by a person he had known when they worked together at an Air Force base. Applicant was in charge of the day-to-day operations. The company was established to do business as a defense contractor providing computer and physical security services for various DoD facilities and installations. Applicant and a small staff ran the company's operations from State A. He was the registered agent for the company in that state. The finance, human resources, administrative support, and the rest of the company's employees lived and worked in State B. The owners resided in State C and were never involved in the daily operations of the company. Their primary focus was on obtaining investment capital and to sell stock to fund the company's growth. (Gx. 4; Tr. 49 - 51, 53, 82 - 90)

In April 2005, Applicant's company became a sub-contractor to another defense contractor. That contract did not guarantee how much work, if any, the prime contractor would seek from Applicant's company. (Gx. 4) Applicant's company subsequently issued a press release that claimed the contract was worth six million dollars, despite the fact that no work had been requested by the prime contractor. Two other press releases claiming other multi-million dollar contracts were issued in June 2005 and

January 2006. After each of the press releases, both the volume of stock in Applicant's company and the value of that stock increased significantly. There was no support for the claims made in the press releases. (Id.) Applicant testified that in January 2005 his company had no revenue, no contracts, and employed only five people. At the end of the year, the company employed about 35 people and earned about \$1.3 million in total revenue, far less than the figures claimed in the company's press releases. (Tr. 90 - 91)

In August 2008, the SEC filed a civil complaint in federal district court against Applicant and the owners of his company alleging they deliberately issued, through press releases, false information about the value of their company. The complaint further alleged that Applicant and the other principals in the company issued the press releases in a deliberate attempt to inflate the value of company stock and to profit from improper sales of that stock. (Gx. 4) Applicant admitted that he had been involved with getting the contract that was the subject of the first press release, and that some of the information therein came from an internal working document. However, Applicant has always denied any wrongdoing and insisted that the owner issued the press releases over his strenuous objections. Contrary to the SOR 2.b allegation, Applicant did not deny knowledge of the press releases. (Gx. 3; Gx. 7; Tr. 92 - 94)

In an Order for Summary Judgment against Applicant's co-defendants, the court agreed that Applicant told the owner not to publish the press releases because the information would be misleading. (Ax. J) On December 22, 2009, the final judgment as to Applicant consisted of three permanent injunctions against future SEC-related conduct by the Applicant. Based on his finances, the court did not order any civil penalties or disgorgement of any funds he may have received through the increased value of his company's stock. (Tr. 97 - 98) It was not established that Applicant ever received any funds from the sale of company stock. The final judgment against Applicant was by consent and did not contain any admission or denial of the SEC's allegations. (Ax. G)

The company for which Applicant was CEO continued to exist until about January 2007, but there was no work after about July 2006. Applicant stopped working for the company in November 2006, but he was not paid consistently after July 2006. He stayed on as CEO only because he felt an obligation to try to protect the employees under him, many of whom he had recruited to join the company. (Tr. 95 -96) Applicant was unemployed from November 2006 until he was hired by a defense contractor in April 2007. (Gx. 1) During his unemployment, he was still obligated to pay his ex-wife the monthly support specified in their divorce decree. As already noted, he fell behind on some of his payments. He also used personal credit extensively to make ends meet.

As a result, he incurred significant delinquent debt that was largely unpaid as of his hearing. The debts alleged at SOR 1.a, 1.g - 1.m, 1.r, and 1.t total about \$36,460 and consist of unpaid credit cards or other personal credit accounts. The \$17,610 debt alleged at SOR 1.p is for a truck that Applicant purchased in January 2005. He began missing payments in March 2007, but was able to make some payments in May and July 2007. The truck was repossessed in August 2007. Applicant owes the amount remaining after the truck was resold. (Gx. 2; Gx. 3; Gx. 11; Gx. 12; Gx. 13)

Credit reports obtained during Applicant's background investigation also showed that Applicant was obligated for a \$1,633 debt (SOR 1.d) owed to an apartment complex where he and his fiancée lived in 2007. This debt has been paid. (Answer to SOR; Ax. J; Tr. 57 - 58) Also related to that apartment was an alleged \$191 debt (SOR 1.q) to a cable television company for failing to return the cable box after he moved out. Applicant denies owing this debt as it represents charges made after he properly closed the account. (Tr. 65 - 66) A \$381 debt for a satellite television account (SOR 1.e) and a \$3,524 debt for the balance due on a home loan (SOR 1.o) were to be paid by his ex-wife using proceeds from the sale of the marital residence. Applicant has no knowledge of a \$173 debt for an unpaid medical bill (SOR 1.f) attributed to him. (Answer to SOR) It may be for a doctor's visit for one of his children, but it should have been covered by TriCare, the medical insurance for retired military members.

Also attributed to Applicant in the credit reports obtained during his background investigation is an unpaid telephone bill for \$18,987. (SOR 1.s) After Applicant and his ex-wife separated in 2006, one of his sons came to live with him. Without Applicant's knowledge, the boy subscribed to an internet service provider using a long-distance phone number as the means of connecting to the internet. The use of a standard phone line was necessitated by the fact that Applicant lived in a rural area. Applicant tried for several months to resolve the debt, but the phone company would not negotiate. (Tr. 66 - 67, 105 - 106)

In 2006, Applicant gave a small piece of land in State A to his brother. However, his brother did not have the deed recorded properly and the taxes were still charged to Applicant. As a result, Applicant incurred a \$269 tax debt to State A that was enforced through a lien filed against him in August 2006. (SOR 1.u) This debt has been paid and the deed has been properly recorded. (Tr. 67 - 69, 106 - 107; Ax. J)

As the registered agent for his company in State A, Applicant was named on all accounts to be paid by the company. When the company failed in 2006, he was obligated to pay several debts, including an unpaid corporate cell phone account for \$2,386. (SOR 1.n) He also became obligated for unpaid corporate taxes not paid by the company. The tax debts total \$13,589. (SOR 1.b and 1.c) Applicant denies he should be obligated to pay these debts, but he has been working with State A tax authorities to repay the debts. (Ax. A; Ax. B) He also claimed that the actual total owed is about \$2,905. (Ax. I) However, that amount is likely the amount he owes for his own income taxes after his ex-wife improperly claimed their children on her taxes at the same time he claimed them on his. He is repaying that debt through automatic deductions from his paycheck. (Ax. D; Tr. 55, 72 - 74)

Applicant also made \$50 monthly payments to the creditor alleged in SOR 1.a (Ax. F) beginning in January 2009. He also received financial counseling and was trying to obtain a debt consolidation loan in 2008. The company he was working with recommended he wait until he knew whether his alimony and support obligations would be reduced. However, after his support obligations were reduced by about \$2,100 in August 2008, he did not continue the debt consolidation loan process. In April 2010, five days before his hearing, he retained an attorney to file a Chapter 7 bankruptcy petition. (Tr. 57, 79 - 81) The current status of his bankruptcy is unknown.

Applicant's current finances reflect a positive cash flow, after all expenses including child support. Applicant estimates he has between \$600 and \$800 remaining each month. His retirement savings total about \$6,000. (Tr. 81 - 82)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. Each decision must be a fair and commonsense determination based on examination of all available relevant and material information,<sup>7</sup> and consideration of the pertinent criteria and adjudication policies in the 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 ¶ 15 (Guideline E - Personal Conduct) and 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>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

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive. 6.3.

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

“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:

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 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.v; that is, that Applicant accrued about \$95,203 for 21 delinquent debts since about 2006, and that he was charged with violating provisions of the Securities and Exchange Act in 2005 and 2006. The debts alleged at SOR 1.d, 1.e, 1.f, 1.o, 1.q, and 1.u have been paid or otherwise resolved. For reasons discussed under Guideline E, the allegation at SOR 1.v is also resolved for the Applicant. However, those debts comprise only about 6% of the total debt he owes. Applicant has not demonstrated that he is able or willing to pay or resolve his debts. Even without the debts that have been resolved, or discounting the debts that may be attributed to the failed business (SOR 1.b, 1.c, and 1.n), Applicant still owes about \$54,000 in delinquent personal debt. Accordingly, 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 the SOR and at the hearing, Applicant established that he has a valid dispute as to the debts alleged at SOR 1.d, 1.e, 1.f, 1.o, and 1.u. Accordingly, the mitigating condition at AG ¶ 20(e) (*the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) applies. As to the \$18,000 phone bill alleged at SOR 1.s, Applicant was responsible for knowing what was happening under his own roof. He cannot reasonably dispute such a large phone bill just because his son caused the debt.

Applicant also established that many of his debts arose when he became unemployed in November 2006. His loss of income combined with a large monthly alimony and child support obligation caused him to rely on credit cards and other forms of personal credit to make ends meet for several months. He also became obligated to pay other debts related to the business for which he was a CEO between late 2005 and late 2006. Other alleged debts related to an apartment he rented after his divorce, and

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

debts his ex-wife should have paid after she sold their house have been resolved. These facts require consideration of 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*). However, most of the debts remain unpaid and have not been addressed in a constructive manner. Applicant claimed that he received some financial counseling and had started the process of obtaining a debt consolidation loan, but no action has been taken since August 2008. Applicant intends to file for federal bankruptcy protection, but did not retain an attorney for that purpose until less than a week before his hearing. Available information does not support a conclusion that he acted responsibly under the circumstances. The mitigating condition at AG ¶ 20(b) does not apply. Likewise, because most of his debts have not yet been paid or otherwise resolved, none of the other mitigating conditions apply. Applicant has failed to present sufficient information to mitigate the security concerns raised by the Government's information.

## **Personal Conduct**

The Government also presented sufficient information to support the SOR 2.a allegation that Applicant was the subject of a civil suit by the SEC in August 2008. However, all of the available information probative of whether Applicant actually engaged in the conduct alleged by the SEC tends to show he tried to stop the press releases and that he had no control over the information that was released. In short, he was in over his head and was being manipulated by the owner and other co-defendants in the suit. More specifically, a federal district judge reached that conclusion in his Order of Summary Judgment against the owner of the company. The record as a whole regarding Applicant's role in the malfeasance alleged by the SEC shows that Applicant was not a witting accomplice in the fraudulent actions of the owner and other co-defendants. Further, although permanent injunctions were issued in the Consent Order against the Applicant, the same order does not contain any finding of culpability by Applicant. Applicant's response to SOR 2.a merely acknowledged the fact that the SEC named him in a civil suit. His admission did not establish that he acted as the SEC had claimed. As such, the SOR allegation that he was the subject of an SEC lawsuit, without more, does not support application of any of the disqualifying conditions under Guideline E.

Further, available information does not support the SOR 2.b allegation that Applicant deliberately lied to the SEC in his response to the civil complaint. This allegation is based on the complaint itself (Gx. 4), which does not prove that Applicant lied. Applicant was entitled to his answer to the SEC complaint (Gx. 7), in which he denied intentionally trying to manipulate the value of the company's stock. Again, in the Order for Summary Judgment against the company's owner, the judge concluded that Applicant told his boss not to issue the press releases. To be disqualifying, Applicant's answer to the SEC must have been a deliberate attempt to provide "false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative." (AG ¶ 16(b))



That did not happen here. On balance, the Government's information does not support disqualification under Guideline E. SOR 2.a, 2.b, and 1.v are resolved for the Applicant.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 46 years old and presumed to be a mature adult. References from co-workers, Government officials, former Air Force comrades, and other associates and friends laud his work ethic, dedication, expertise, and reliability. As to the suit against him and others by the SEC, available information reflects that he did not knowingly engage in any fraudulent conduct as his co-defendants did. His candor and his personal conduct pertaining to the SEC suit are not in question here. However, Applicant's judgment and suitability for access to classified information remain in question because of his financial problems. Although most of his debt was the result of a period of unemployment and his divorce-related support obligations, he has not responded to those challenges in a reasonable way. Although he has had steady income since about April 2007, he failed to follow through on a debt counseling and consolidation effort in 2008. He has only recently initiated bankruptcy proceedings. Although such action may be his most appropriate course of action, the fact that he waited so long to affirmatively resolve his debts undermines confidence in his continued access to classified information at this time.

On balance, a fair and commonsense assessment<sup>10</sup> of all available information bearing on Applicant's past and current circumstances shows he has not satisfactorily addressed the government's doubts, raised by his ongoing financial problems, about his ability or willingness to protect the government's interests. Because protection of the national interest is the paramount concern in these adjudications, those doubts must be resolved against the individual and in favor of the Government.<sup>11</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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

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<sup>10</sup> See footnote 5, *supra*.

<sup>11</sup> See footnote 7, *supra*.

Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraph 1.v:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	For Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge