



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 09-02974
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

March 29, 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 denied.

On February 16, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his work for 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 obtain clarification of and/or additional information about potentially disqualifying information in his background. After reviewing the results of the background investigation, as well as Applicant's response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

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

finding<sup>2</sup> that it is clearly consistent with the national interest to allow him access to classified information. On July 27, 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 August 17, 2009, Applicant responded to the SOR, admitted without explanation all of the allegations therein, and requested a determination without a hearing. On September 10, 2009, Department Counsel requested a hearing.<sup>4</sup> The case was assigned to me on September 21, 2009, and I convened a hearing on November 19, 2009. The parties appeared as scheduled. The government presented nine exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 - 9. Applicant and two witnesses testified on his behalf. The record remained open after the hearing to give Applicant time to submit additional relevant information. DOHA received the transcript of hearing (Tr.) on December 1, 2009. The record closed on December 4, 2009, when I received Applicant's post-hearing submissions, which have been admitted into the record without objection as Applicant's Exhibits (Ax.) A and B.

### **Findings of Fact**

The government alleged under Guideline F that Applicant owes approximately \$19,874 for 14 delinquent debts (SOR ¶¶ 1.a - 1.m), that he filed for Chapter 13 bankruptcy protection in May 2009 (SOR ¶ 1.n), and that he filed a Chapter 7 bankruptcy petition in August 2003, which resulted in a discharge of his debts in November 2003 (SOR ¶ 1.o). As noted, Applicant admitted all of the allegations. In addition to the facts established through his admissions, I have made the following findings of relevant fact.

Applicant is 34 years old and has worked as a senior electrical designer for his current employer since May 2002. Applicant served on active duty in the U.S. Navy from September 1993 until he was honorably discharged in March 1999. Applicant's wife also served in the Navy until 1998. They have been married since 1996 and have two children, ages 13 and 11. (Gx. 1; Gx. 2)

Applicant began experiencing financial problems in about 1996. He and his wife overextended themselves financially while they were on active duty. They were usually slow to pay many of their monthly obligations. When his wife was discharged in 1998, she was pregnant and did not work until early 1999. To save money, she and their children went to live with his parents in his hometown, and he went to live with friends

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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.

<sup>4</sup> Authorized by Directive, E3.1.7.

near his duty station for the duration of his enlistment. When he left the Navy, they all lived with his parents until June 2000, then in their own home until September 2001. At that time, they moved to their current location because the cost of living was lower. (Gx. 5) Applicant was unemployed from November 2001 until he was hired for his current job.

In February 2003, pursuant to an application for a top secret security clearance needed for his employment, investigators obtained a copy of Applicant's credit report. (Gx. 6) That report showed that Applicant was either delinquent or past-due on 11 credit accounts. In May 2003, when he was interviewed by a government agent about his finances, he admitted in a signed, sworn statement (Gx. 5) that he and his wife were financially overextended and were considering filing for bankruptcy liquidation of their debts. As part of that statement, he submitted a personal financial statement that showed they had a negative \$40 cashflow each month. In August 2003, they filed a Chapter 7 petition and their debts were liquidated in November 2003.

Applicant was given a top secret clearance in March 2004. In February 2009, he submitted his e-QIP to begin a five-year renewal of his clearance. (Gx. 1; Tr. 68) He disclosed his Chapter 7 bankruptcy in his e-QIP and disclosed that he owed about \$1,530 for two past-due credit cards. In the subsequent background investigation, a credit report obtained in February 2009 (Gx. 8) showed that Applicant owed the debts alleged in SOR ¶¶ 1.a - 1.k. A credit report obtained by a DOHA adjudicator in July 2009 (Gx. 9) documented the debts listed at SOR ¶¶ 1.l and 1.m.

Applicant does not contest any of the debts alleged in the SOR, and he admitted that he and his wife again overextended themselves after moving to their current location in 2001. Applicant also stated that he and his wife have incurred additional costs as a result of his August 2007 diagnosis of Type 1 diabetes and her one month unemployment the same month. However, he has medical insurance that covers most of his diabetes-related costs and acknowledged that, had they not been overextended, these events would not have presented a problem. (Tr. 37 - 40) Applicant and his wife earned about \$83,000 in 2007 and more than \$90,000 in 2008. (Gx. 2)

Around the time Applicant was interviewed during the current background investigation, he consulted with the Employee Assistance Program (EAP) at work. He was referred to a financial counselor who recommended he file for Chapter 13 bankruptcy protection. He and his wife did so on May 4, 2009, declaring \$234,398 in liabilities against \$211,437 in assets. Their wage earner's plan will allow them to repay approximately \$38,000 in debts and other financial obligations (their car loans and repayment of a mortgage arrearage are included). The plan was approved in July 2009 and Applicant pays about \$1,700 each month directly from his paycheck. (Ax. A; Tr. 50) Aside from financial counseling required as a condition of filing in bankruptcy, Applicant has had no other financial counseling. (Tr. 59)

Applicant and his wife have about \$500 remaining each month after all income deductions and expenses, including his Chapter 13 payments. As required by the terms

of their bankruptcy plan, they have relinquished all credit cards, and they have not sought any new personal credit.

Applicant has performed very well at work, as shown by consistently above average or superior performance appraisals. His facility security officer (FSO) testified that he is reliable and has a solid reputation. A supervisor who has known Applicant for over seven years regards him as “completely trustworthy, honest, and of high character.” (Ax. A; Ax. B; Tr. 65 - 66)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</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>6</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. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the government’s case. Because no

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<sup>5</sup> Directive. 6.3.

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

one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</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>8</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 allegation in SOR ¶ 1.a - 1.o. Additionally, Applicant admitted without explanation that he accrued more than \$19,000 in delinquent personal debt even after he was discharged of his debts through bankruptcy in 2003. Available information shows that Applicant and his wife have an extended history, dating back to about 1998, of financial problems due almost exclusively to overspending. Accordingly, the record supports those allegations and requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); AG ¶ 19(c) (*a history of not meeting financial obligations*); and AG ¶ 19(e) (*consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*).

By contrast, available information shows that Applicant has only recently begun repaying his debts through a five-year Chapter 13 wage earner’s plan approved in July 2009. The debts in his credit report will remain unresolved until he satisfactorily completes the plan. Further, his use of personal credit is restricted by the terms of his bankruptcy petition. In view of his 12-year history of overspending and poor financial management, he has not yet established a sufficient record of reliable and responsible financial decision making. Further, on the two occasions his finances have been evaluated for purposes of assessing his suitability for a clearance, Applicant has had to take drastic action to resolve his debts. However, in the time between his first and

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<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

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

second applications for clearance, he did nothing to improve his personal financial practices so he could avoid such problems. Aside from a court-directed financial counseling course required before he could file for bankruptcy protection, Applicant has not made any efforts to improve his knowledge of sound financial management.

Based on all of the foregoing, the record does not support application of the mitigating conditions at AG ¶ 20 (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 doubt on the individual's current reliability, trustworthiness, or good judgment*); 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*); 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*); or AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant has not mitigated the security concerns 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 in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 34 years old and presumed to be a mature, responsible adult. According to his FSO and his supervisor, he is trustworthy and reliable. However, the positive information about Applicant is insufficient to overcome the adverse information about his protracted history of financial problems. A fair and commonsense<sup>9</sup> evaluation of this record shows that concerns remain about Applicant's finances, thus perpetuating the doubts raised by the government's information 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 for 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.o:	Against Applicant

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<sup>9</sup> See footnote 5, *supra*.

<sup>10</sup> See footnote 8, *supra*.

## **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge