



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 09-03578
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro se*

June 16, 2010

**Decision**

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 January 15, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) 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 two sets of interrogatories<sup>1</sup> to clarify or augment information about 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

<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.

consistent with the national interest to grant Applicant's request for access to classified information. On November 19, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)<sup>3</sup> for financial considerations (Guideline F).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on February 5, 2010. Pursuant to a Notice of Hearing issued the same day, I convened a hearing in this matter on February 24, 2010. The parties appeared as scheduled. The Government presented seven exhibits (Gx. 1 - 7), which were admitted without objection. Applicant testified on his own behalf and proffered two exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A and B. DOHA received the transcript of hearing (Tr.) on March 9, 2010.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes approximately \$137,594 for 34 delinquent debts (SOR 1.a - 1.hh). In response to the SOR, Applicant admitted the allegations at SOR 1.e, 1.f, and 1.v. He did not respond to SOR 1.o; however, at hearing he denied the allegation. (Tr. 10) In his SOR response he also denied the remaining debts. Applicant's admissions are entered as facts. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I also make the following findings of relevant fact.

Applicant is 38 years old and requires a security clearance for his job with a defense contractor, which he has held since May 2008. Applicant and his wife have been married since October 2007, and they have a one-year-old child. Applicant was previously married from March 1995 until July 2002, when the marriage ended by divorce. He has one child from that marriage (age 16) for whom he pays \$735 each month in child support. As alleged at SOR 1.v, his child support obligation is garnished from his pay by a state child welfare agency. The amount withheld is based on the original monthly support ordered as well as an amount calculated to resolve the \$15,765 arrearage listed at SOR 1.v. (Ax. A, Gx. 2 - 7)

Applicant attended a state university from 1991 until 1998, but he never obtained a degree. He financed his studies through student loans totaling about \$65,000. When he left school, payment on the loans was deferred, but interest still accrued. The loans became delinquent in 2003, because Applicant had failed to establish a payment plan and did not respond to the lender's requests for payment. Applicant moved several times between 1998 and 2003, but did not keep the student loan lender informed of his whereabouts. By 2008, when Applicant began working for his current employer, the student loan debt had increased to \$108,000 (SOR 1.e). At that time, a collection company garnished Applicant's pay for the student loan after he advised he could not pay them \$800 each month as they requested. Between \$45 and \$120 is withheld from

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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.

Applicant's pay depending on how much overtime he works and based on a percentage of what is left over after he pays child support. As of the hearing, approximately \$2,961 of Applicant's pay had been diverted to his delinquent student loans. (Tr. 36 - 38)

When Applicant submitted his e-QIP, he disclosed that his pay was being garnished for his child support obligation and that he was delinquent on student loans totaling \$61,000. (Gx. 1) He did not disclose any other adverse financial information. However, a credit report obtained during his background investigation showed that Applicant was delinquent on at least 32 other debts totaling approximately \$13,829. Those debts are alleged in SOR 1.a - 1.d, 1.f - 1.u, and 1.w - 1.hh.

In response to DOHA interrogatories, Applicant asserted that the debts at SOR 1.a, 1.b, 1.f, 1.m, 1.q, 1.w, 1.x, 1.z - 1.dd were being included in a debt consolidation and repayment plan. Further, he asserted that he was disputing the debts alleged at SOR 1.c, 1.d, 1.g - 1.l, 1.o, 1.p, 1.r - 1.u, 1.y, and 1.ee - 1.gg. (Gx. 3) However, at hearing, Applicant showed that only two of his debts (SOR 1.b and 1.hh) were being paid through the repayment plan, which started in July 2009. (Ax. A) Also in response to the interrogatories, Applicant showed that he had filed on-line disputes with the three major credit reporting agencies regarding the debts alleged at SOR 1.d, 1.e, 1.g, 1.h, 1.t, 1.u, 1.y, 1.ff, and 1.gg. (Gx. 3)

Applicant did not provide any documentation of the bases for or validity of his disputes. Instead, Applicant relied on the absence from his credit report (Ax. B) of several of the debts alleged in the SOR. However, some of those debts are still listed in his credit report, which also lists other delinquent debts not alleged in the SOR. Aside from the two debts included in the debt repayment plan, for which he is paying a total of \$34 each month, Applicant has not paid or otherwise resolved any of the debts listed in the SOR.

## **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. Each 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 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

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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 ¶ 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>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 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:

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.hh. However, the allegation at SOR 1.cc is a duplicate of the debt at SOR 1.p, the debt alleged at SOR 1.ee is a duplicate of the debt SOR 1.j, and the debt at SOR 1.gg is a duplicate of SOR 1.i. Accordingly, SOR 1.cc, 1.ee and 1.gg are resolved

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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).

for the Applicant. Nonetheless, Applicant still owes significant debt that has been delinquent for at least seven years. Even if I accepted his claims that several of the listed debts are not his, he still owes in excess of \$120,000 for unpaid student loans, which he ignored for more than five years after he left school without a degree, and for a \$15,000 child support arrearage for his oldest child. Applicant has been steadily employed since at least 2002 (Gx. 1). However, until he started a repayment plan for two debts in July 2009, he had not addressed even the smallest debts of his own volition (e.g., SOR 1.k is for \$35). Available information 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 hearing, Applicant claimed that his debts arose, in part, from his divorce in 2002 and the subsequent child support order. These facts might require consideration of the mitigating condition at (*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, AG ¶ 20(b) does not apply because he has not established that he acted responsibly under the circumstances. His two largest debts are being satisfied by wage garnishment, and he did not include many of his debts in his repayment plan as he claimed in response to DOHA interrogatories.

As to his disputes of debts in his credit history, Applicant is entitled to contest creditors' claims against him. However, in the context of assessing his suitability for access to classified information, he is required to document the basis for such disputes. He has not presented sufficient information to support application of 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*).

Applicant's financial problems are ongoing and recent. Additionally, he has not demonstrated that he is managing his finances so as to avoid future delinquencies. Available information does not support application of any of the remaining mitigating conditions under AG ¶ 20. Applicant has not met his burden of producing information sufficient to refute, mitigate, or extenuate the security concerns raised by the Government's information.

### **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). Available information shows that Applicant, 38 years old, has been working steadily for most of the past ten years, but that his finances were adversely impacted by a divorce in 2002. However, available information about his work performance or other aspects of his personal and professional life is insufficient to outweigh the adverse inferences to be drawn from his

history of unpaid debts. Thus, a commonsense assessment<sup>8</sup> of all available information bearing on Applicant's past and current circumstances shows he has not addressed satisfactorily the Government's doubts about his ability and 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>9</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.cc, 1.ee, 1.gg :	For Applicant
Subparagraph 1.a - 1.bb, 1.dd, 1.ff, 1.hh:	Against Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge

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<sup>8</sup> See footnote 5, *supra*.

<sup>9</sup> See footnote 7, *supra*.