



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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SSN: ----- ) ISCR Case No. 09-03927  
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Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

June 28, 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 granted.

On July 5, 2007, 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 a set 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 December 31, 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). Specifically, it was alleged through the SOR that Applicant owed approximately \$17,047 for six delinquent or past-due debts (SOR 1.a - 1.f).

Applicant timely answered the SOR, provided information showing that he had paid or otherwise resolved the debts at SOR 1.a - 1.e, and that the debt at SOR 1.f was in dispute and likely not his. He requested a hearing.

On March 3, 2010, Department Counsel, having reviewed Applicant's answer, amended the SOR to allege that Applicant also owed approximately \$17,401 for five other delinquent or past-due accounts (SOR 1.g - 1.k). Applicant timely answered the additional allegations and provided information showing that the debts alleged at SOR 1.h and 1.i have been paid, and that the debts alleged at SOR 1.g, 1.j, and 1.k are in dispute and likely not his. He renewed his request for a hearing.

The case was assigned to me on April 16, 2010. Pursuant to a Notice of Hearing issued on April 19, 2010, I convened a hearing in this matter on May 5, 2010. The parties appeared as scheduled. The Government presented six exhibits (Gx. 1 - 6), which were admitted without objection. Applicant testified on his own behalf, and proffered five exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - E. DOHA received the transcript of hearing (Tr.) on May 13, 2010.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant accrued approximately \$34,448 for 11 delinquent debts (SOR 1.a - 1.k). In response to the SOR, Applicant denied with explanation each of the allegations. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

The Government presented information (Gx. 4) documenting the debts alleged in the SOR. In response to the interrogatories and the SOR, and at hearing, Applicant presented information showing that the debts alleged at SOR 1.b - d, and 1.i have been paid. He further showed that the debts at SOR 1.a and 1.e have been consolidated for repayment to the same collection agency, and that he has been paying \$125 each month for those debts since April 2009. (Ax. D; Tr. 60 - 61) Applicant denied owing the debt at SOR 1.f because it is not his and has been removed from his credit report. At hearing, his position was supported through Ax. E, Gx. 5, and Gx. 6. It is likely this is a debt generated when his ex-wife bought a computer. (Tr. 61 - 62) He denied SOR 1.g because responsibility for the debt was assigned to his ex-wife when they divorced. 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.

support of this, he submitted Ax. C. Applicant denied SOR 1.b and 1.h and established through his response to the Amendments to the SOR that they are the same debt, which he paid in full in November 2008. He denied the debt at SOR 1.j, claiming that he had already paid the debt. He submitted a copy of the letter he sent that creditor requesting documentation of his payment, but he has not received a reply. He denied SOR 1.k claiming the debt is not his. In support of his claim, he argued that the debt no longer appears on his credit report. (Ax. E; Gx. 5; Gx. 6)

Applicant is 54 years old and employed by a defense contractor in a position that requires a security clearance. Applicant has worked for his current employer as training instructor since 2009. However, he has been doing the same job at the same military installation since February 2007. Applicant obtained an associate's degree in criminal justice in 2007 after working as a corrections officer from June 2005 until he was hired by a defense contractor in 2007. The contract he supports has changed companies twice since then. Applicant was first granted a security clearance in December 1977 when he joined the U.S. Army. He served in the Army in the electronics communications field until November 2000, when he retired and was honorably discharged as a First Sergeant. (Gx. 1)

Applicant has been married twice. His first marriage began in June 1978 and ended by divorce in December 1991. He had one child and two stepchildren, all now in their 30s, with his first wife. Applicant re-married in July 1992 and had another child, now 18 years old. Applicant and his second wife separated in 2001 and finalized a divorce in October 2005. Applicant's child support obligations, which he paid as required, recently ended when his child turned 18.

Applicant was separated from his wife because of Army deployments and other assignments for about five of the last eight years of his Army career. When he was promoted to First Sergeant, he had to take an assignment in another part of the United States, but his wife and child stayed behind. From February 1998 until December 2000, he had to support his wife and child while he was a geographical bachelor. He relied on his wife to handle their marital finances in his absence. (Tr. 53, 83 - 84) After he retired in 2000 and was home for more than a few weeks at a time, he learned that she had accrued several credit card debts and other bills that were significantly overdue or delinquent altogether. They separated in 2001, in part, because of tension over their finances. He went to work as an assistant manager of a department store, but he did not make enough money to support himself, pay his child support obligations, and resolve the debts his wife had amassed. (Tr. 50 - 57)

According to the summary of his subject interview in November 2007, Applicant had already paid some of his debts by November 2003. (Gx. 3) Before 2007, he was able to address some of his debts, but it was not until February 2007 that his civilian income along with his retired pay (which includes an 80% disability benefit) has allowed him to resolve the remaining delinquencies from his second marriage.

Applicant's current finances are sound. He has never missed a mortgage or car payment, has no credit cards, files his taxes on time, and lives within his means. As of the hearing, he had about \$1,795 in disposable income after expenses each month. (Tr.

72 - 73) This is an increase of about \$800 from July 2009, when he had about \$936 remaining after expenses. (Gx. 2) Applicant bought his house in 1995 for about \$90,000, and still owes about \$73,000 on the mortgage. He has never refinanced his mortgage or borrowed against the equity in his house. He has about \$800 in his checking account and about \$10,000 in savings. (Tr. 76 - 85)

Applicant has a solid reputation among friends, co-workers, and former Army colleagues for strength of character, honesty, and reliability. His references, some of whom have known him for nearly 20 years, also praised him for his generosity and professionalism. (Ax. A)

### **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 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

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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.

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.k;<sup>8</sup> that is, that Applicant accrued about \$34,448 for 11 delinquent debts. Applicant’s financial problems arose during the last few years of his marriage while he and his second wife were separated, initially because of his Army duties, and later because of the deterioration of their marriage. Although Applicant learned of the extent of his indebtedness around 2000 or 2001, it has taken him most of the past ten years to pay or otherwise resolve his delinquencies. 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*). As to AG ¶ 19(a), the record shows that this is more a case of inability rather than unwillingness to pay.

In response to the SOR and at hearing, Applicant established that he has paid or otherwise resolved all but one (SOR 1.f) of his debts. Applicant also established that he began resolving his debts before DOHA adjudicators issued interrogatories or issued the SOR. Applicant’s debts resulted through the break-up of his second marriage, which was caused, in part, by his second wife’s mismanagement of their finances. He also established that at least one of the alleged debts (SOR 1.g for \$8,119) was his ex-wife’s responsibility. Available information further showed that Applicant’s finances are now characterized by the absence of new debt, responsible spending, significant positive

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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).

<sup>8</sup> It is unclear why SOR 1.g - 1.k were not included in the original SOR in December 2009. All of the debts alleged are documented in a credit report obtained in July 2007, were discussed by Applicant in his November 2007 subject interview, or were addressed in the interrogatories sent to Applicant in July 2009.

cashflow, and substantial savings. The circumstances that gave rise to his past delinquencies are not likely to recur.

All of the available information bearing on Applicant's financial problems and his response thereto requires 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*); AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*); and 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*). On balance, I conclude that the security concerns about his finances 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 54 years old and presumed to be a mature adult. His testimony was straightforward and credible, and he has been forthcoming about his financial problems at every stage of his background investigation and the adjudication of his case. Applicant honorably served for more than 23 years in the U.S. Army. Since being hired by a defense contractor in 2007, he has continued to apply his military experience as a civilian instructor of military personnel. His references corroborate the reliability and sound judgment reflected through his prompt actions to resolve his financial problems. The adverse information about his finances arose largely through circumstances beyond his control and are not likely to recur. A fair and commonsense assessment<sup>9</sup> of all available information bearing on Applicant's past and current circumstances shows he has addressed satisfactorily the Government's doubts about his ability or willingness to protect the Government's interests as his own.

### **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.k:	For Applicant

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

## **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge