



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 09-04847
	)	
Applicant for Security Clearance	)	

**Appearances**

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

April 30, 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 April 3, 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) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request for access to classified information. On August 11, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging

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

facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)<sup>2</sup> for financial considerations (Guideline F).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on December 18, 2009. Pursuant to a Notice of Hearing issued on December 30, 2009, I convened a hearing in this matter on January 20, 2010. The parties appeared as scheduled. The Government presented four exhibits (Gx. 1 - 4), which were admitted without objection. Applicant testified on his own behalf, presented one witness, and proffered seven exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - G. DOHA received the transcript of hearing (Tr.) on January 28, 2010.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes approximately \$22,783 for nine delinquent debts (SOR 1.a - 1.i), and that he filed a Chapter 7 bankruptcy petition in 1997 (SOR 1.j). In response to the SOR, Applicant admitted with explanation each of these allegations. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

Applicant is 54 years old and employed by a defense contractor. He requires a security clearance to perform the duties of his position as a trainer of entry-level military personnel in satellite communications. Applicant enlisted in the U.S. Army in 1974, and retired with an honorable discharge in March 1995 as a staff sergeant. His primary mission responsibility was in the field of tactical microwave and satellite communications.

Applicant has been married three times. His first marriage began in April 1985 and ended in divorce in November 1994. This marriage produced four children (ages 19 - 23). His youngest child just returned from a 12-month tour of duty in Iraq. Applicant and his second wife were married in May 1997, but divorced in 1999. Applicant married his current wife in September 2001. (Gx. 1)

Applicant's first wife left him while he was deployed to Iraq for Operation Desert Shield / Desert Storm. When they divorced, she took custody of all four children. Their divorce left him with their house and all of the marital debts. When Applicant retired in 1995, he was unable to find work that augmented his retired pay sufficiently to pay his debts and meet his child support obligations. In January 1997, he filed a Chapter 7 bankruptcy petition and was discharged of almost \$77,000 in debts and other liabilities in May 1997. (Tr. 31 - 32; Gx. 4)

The divorce decree between Applicant and his first wife required him to provide health insurance for her and their children. Applicant did so through the TriCare for Life

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<sup>2</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.

plan provided through his military retirement. However, despite living near a large military installation, his ex-wife elected to get medical care elsewhere. In 2003, Applicant's ex-wife went to court and claimed that he owed her more than \$50,000 in medical expenses. The court in her state agreed, characterizing the claim as unpaid child support and ordered that \$364 be garnished from his retired pay each month (SOR 1.i). Because his children are grown, Applicant no longer has to pay the \$1,100 monthly child support as ordered through their divorce. But he did not miss any payments while he was so obligated to pay. It is unlikely that he will ever be able to satisfy the medical insurance claim from his ex-wife as that debt is still accruing 21% interest. Available credit reports show this debt is not in a collection or other delinquency status, but is being paid "as agreed." (Tr. 33 - 34, 42 - 44; Gx. 2)

When Applicant married his second wife, he was trying to start a small business. His work required that he work six long-hour days a week. He and his second wife agreed that she would handle the bookkeeping while he tended to the business. Among the tasks he relied on her to perform was paying required taxes. He gave her the money for their taxes, but she put it in her bank account rather than paying the taxes. As a result, for tax year 1997, Applicant owes the Internal Revenue Service (IRS) \$6,668 (SOR 1.d). For tax year 1998, he owes \$12,476 (SOR 1.c). Applicant has not yet paid these debts, because he has been advised by tax attorneys and on-line tax resources that the IRS may not by law collect on debts greater than 10 years old. Applicant cited Section 301-6502.1(a)(1) of the IRS Tax Code as support for his claim. (Ax. G) He also averred that the IRS has intercepted his occasional tax refunds since the debts became delinquent. Applicant is still researching this issue and is also trying to make arrangements with the IRS to resolve these debts. He also testified that the IRS told him they will not pursue collection because he has been in a "non-pay" status, but that the debts will remain on his credit report. (Tr. 32 - 33; 45 - 51)

Title 26, Section 6502 of the U.S. Code governs time limitations for collecting unpaid debts. In relevant part, it states:

Collection after assessment.

(a) Length of period. Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun--  
(1) within 10 years after the assessment of the tax ...

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

Available information (Gx. 2) shows that, in 2001, the IRS perfected two liens against Applicant for unpaid taxes from tax years 1997 and 1998. This action satisfied the requirement of "by levy or by a proceeding in court" and was well within the 10 year limitation. The IRS debts alleged in SOR 1.c and 1.d are still enforceable.

Applicant's third wife was a professional baker and caterer when they were married. However, in about February 2002, she began experiencing physical problems. Her issues included four heart attacks in less than two years, and what one physician described as "a cornucopia of neurologic disease." Her conditions eventually led to her becoming disabled and unable to work since about March 2003, and resulted in a loss of about \$4,000 in monthly income. Applicant remained employed, but most of his employment provided just enough income to meet their basic needs between 2002 and 2007, when he obtained his current job, which is the highest paying position he has held since retiring from the Army.

Applicant's wife applied for Social Security disability benefits in 2003, but it was not until August 2009 that she was recognized as fully disabled. In October 2009, she was paid \$43,984 in retroactive benefits and has been receiving monthly disability payments of between \$600 and \$700 each month since then. (Answer to SOR; Ax. C; Ax. D; Ax. E; Tr. 61 - 62)

When Applicant submitted his e-QIP, he disclosed several delinquent debts as well as his 1997 bankruptcy, which is alleged as SOR 1.j. During the subsequent investigation, credit reports showed that he owed the debts listed in the SOR. The debts listed in SOR 1.a, 1.b, 1.e - 1.h total about \$2,376. In response to DOHA interrogatories and the SOR, and during his hearing, Applicant established the following regarding the alleged delinquencies:

- SOR 1.a, a disputed charge of \$195 by a satellite television provider, was settled for \$125 and paid in October 2009. (Ax. A)
- SOR 1.b, a \$194 debt to a grocery store arose when Applicant's wife started working at that store. The debt was for required employee clothing, but she left the job for medical reasons before she actually reported to work. This debt was paid in October 2009. (Id.)
- SOR 1.e was a state tax debt for \$899 for tax years 1995 and 1997. Applicant paid this debt in September 2005. (Answer to SOR; Gx. 2; Ax. B)
- SOR 1.f and 1.g are the same \$514 debt owed to a wholesale warehouse. It was settled for \$411 and paid in October 2009. (Ax. A)
- SOR 1.h represents two unpaid medical bills for \$12 and \$48. Applicant disputed these debts because he thought TriCare should have paid these costs. He decided to pay them in full in October 2009. (Id.)

They were able to pay their bills primarily through the lump sum benefits Applicant's wife received. As a result, their current finances are sound. In addition to their past-due debts, they paid off their car loan and now have about \$800 in positive cash flow each month. They have equity in the house they have owned for 16 years, file their tax returns on time each year, have no new debt or credit cards, and they live well within their means. Additionally, they have used a church-based financial counseling service in the past. (Tr. 51 - 55, 63 - 65)

Applicant is an excellent employee. In April 2009, he was recognized by the Army for his work with families of deployed soldiers and with soldiers on their return from combat missions. He remains active in the American Legion and with a variety of veterans' groups and causes in his state. (Ax. F; Tr. 65 - 66)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>3</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>4</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 security clearance, an applicant bears a heavy burden of persuasion.<sup>5</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>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

<sup>5</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>6</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.f; that is, that Applicant accrued and had not yet paid about \$23,000 for eight delinquent debts (SOR 1.1 - 1.h); that his retired pay was being garnished to satisfy unpaid child support (SOR 1.i); and that he had filed Chapter 7 bankruptcy in 1997 (SOR 1.j). Applicant is current on his child support obligation, which was an unforeseen claim by his ex-wife after several years apart. He has also paid or otherwise resolved all of his debts, except for the two IRS liens against him for about \$19,000. Because he is still delinquent on two significant debts, his financial problems must be regarded as recent. 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 establishes that this is a case of inability to pay rather than an unwillingness to pay.

In response to the SOR and at hearing, Applicant established that he had paid or otherwise resolved most of his outstanding debts once he was able to do so. He also established that a state tax lien from 1999 was satisfied in 2005, long before this action commenced. Available information shows that Applicant’s financial problems began in 1995 when he was divorced, and continued in 1997, after he had been discharged of his earlier debts through bankruptcy, when his second wife left with the money he thought she was going to use for their taxes. Since 2002, his financial woes, particularly his ability to pay or resolve his debts, were exacerbated by his current wife’s disability, loss of income, and a seven-year petition for disability benefits to offset her loss of income.

Applicant has demonstrated that he is responsible when it comes to his finances. He exercised prudent decision-making by ensuring all of his delinquencies and other obligations were paid when he and his wife received her retroactive benefits.

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<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

As to Applicant's IRS debts, which arose through no fault of his own, he is not simply shirking his responsibility. Over the past several years, he has not had the means to satisfy these debts. He is more able to pay now, but to date has acted on a reasonable, but inaccurate, understanding that the debts are not enforceable. They are. Applicant also credibly asserted that the IRS told him they would not pursue collection. At the same time, Applicant stated his intent to try to make some arrangements with the IRS to resolve those debts. The ongoing presence of delinquent debt does not automatically mean Applicant should be disqualified. This amount of debt certainly raises the possibility that Applicant could resort to illegal means to get money to pay his debts. However, the analysis here must also consider, regardless of the amount, Applicant's response to his adverse financial circumstances and his overall approach to money management. On balance, I conclude that the security concerns about his unpaid debt, and about his finances in general, 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 honorably served for more than 20 years in the U.S. Army. Since retiring, he has experienced numerous setbacks that have hurt him financially, professionally, and personally. His response to those adversities since about 1997 is reflective of a mature, responsible individual. His financial difficulties appear to be behind him, thanks in large measure to the unfortunate circumstances surrounding his wife's disability. Despite the presence of two unresolved debts, the totality of information bearing on Applicant's circumstances supports a conclusion that he has answered the doubts raised by his financial problems about his security suitability. Overall, the record reflects well on his judgment and reliability. A fair and commonsense assessment<sup>7</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 and willingness to protect the Government's interests as his own.

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<sup>7</sup> See footnote 4, *supra*.

## **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.j:           For Applicant

## **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