



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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[ NAME REDACTED ] ) ISCR Case No. 09-06505  
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)  
Applicant for Security Clearance )

**Appearances**

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

March 3, 2011  
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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 September 2, 2009, 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 two sets of interrogatories<sup>1</sup> to clarify or augment information obtained in his background investigation. 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

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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.

interest to continue Applicant's access to classified information. On May 29, 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 answered the SOR and requested a hearing. The case was assigned to me on September 23, 2010. Pursuant to a Notice of Hearing issued on September 30, 2010, I convened a hearing in this matter on October 13, 2010. The parties appeared as scheduled. The Government presented seven exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 7. Applicant testified and submitted two exhibits that were admitted without objection as Applicant Exhibits (Ax.) A and B. DOHA received a transcript (Tr.) of the hearing on October 28, 2010. I left the record open until October 29, 2010, to allow Applicant time to submit additional relevant information. However, he did not submit anything and the record closed at that time.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$37,233 for 16 unpaid debts (SOR 1.a - 1.p). Applicant admitted without explanation the allegations at SOR 1.e. - 1.l, 1.k, 1.n, and 1.o. He denied without explanation the remaining allegations. Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 47 years old and is employed by a defense contractor as an electrician at a shipyard on the Gulf of Mexico. He has held his current job since September 2008. From April 2006 until September 2008, Applicant was generally unemployed, except for various periods working odd jobs to make ends meet. From January 2004 until March 2005, Applicant worked for the same defense contractor and at the same shipyard. For about a year thereafter, he worked as a dispatcher, but the job was interrupted for several months by Hurricane Katrina in August 2005. (Gx. 1)

Applicant was married between June 1987 and March 2002. The marriage ended in divorce. Applicant and his ex-wife had two children, now ages 21 and 18. Applicant attended a community college in 1994 and 1995, where he received an associates degree in electronics. (Tr. 78) He matriculated at a nationally-known four-year university in 1996 and attended classes part-time each semester while he home-schooled his children and his wife worked. In May 2000, while Applicant was studying for finals, his wife left him. She took their children and most of his money. (Gx. 2; Tr. 35 - 36)

Applicant regained custody of his children after he finished the semester; however, his wife has paid little in the way of child support. (Tr. 40 - 42) He returned to school in September 2002, thinking his student loans were in deferment. However, in

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<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

October 2002, he was told he was in default. The student loan lender demanded payment of \$8,000 to bring his accounts current, but he could not make the payment so he had to withdraw from school. (Gx. 2; Tr. 36 - 39) As alleged in SOR 1.e - 1.i, and 1.n - 1.p, Applicant owes approximately \$30,469 for eight delinquent student loans. The loans were originally managed by Sallie Mae, but have since been referred for collection. (Gx. 2; Gx. 6) In June 2010, Applicant began a loan rehabilitation program whereby he is to make nine consecutive monthly payments of \$205. If he does so, his accounts will be reflected as current in his credit history, and Sallie Mae will resume management of the debts. (Ax. A; Ax. B; Tr. 32 - 33) However, in establishing the loan rehabilitation program, Applicant insisted that he be allowed to make the payments on his own out of his checking account, rather than have the payments taken directly from his paycheck or automatically debited from his account. He wishes to use the rehabilitation program to help him improve his ability to manage his own money. (Tr. 98 - 100)

At the hearing, Applicant disclosed that he also owes another \$30,000 in delinquent student loans to a state education authority. (Tr. 30 - 31, 96 - 98) Applicant has not made any arrangements to repay these loans, some of which paid for his associates degree in 1994 and 1995. Applicant used funds from his student loans to also subsidize living expenses for him and his family.

This is Applicant's first application for a security clearance. (Tr. 7) Credit reports obtained after he submitted his SF 86 showed that he also owes approximately \$6,044 for two income tax liens from California, where he and his wife lived from 1990 until 1992, as well as an income tax lien from the state where he and his wife lived while he was in school. (Gx. 7) Applicant claims that the California liens have been resolved because they were levied in error, and that the other lien was paid as well. (Answer; Gx. 2; Gx. 5; Tr. 49 - 53) He did not submit any documents to corroborate his claims in this regard.

Applicant's credit history also lists unpaid debts to two utility companies (SOR 1.k for \$80, and SOR 1.l for \$383), one for bank overdraft fees (SOR 1.m for \$114), and two unpaid medical bills (SOR 1.c for \$85, and SOR 1.d for \$58). As to the medical bills, Applicant disputes them because they were erroneously billed by his insurance company for a procedure he had in about 2004. (Tr. 54 - 55) Applicant has not paid the utility bills, which arose when he changed residences in about 2006. Applicant started contacting these creditors about one month before this hearing. (Tr. 57 - 58) Applicant also claimed he is disputing the debt for overdraft fees. (Tr. 61 - 63)

Applicant did not provide any documentation to support his claims of dispute or resolution. He averred that most of his records were lost during Hurricane Katrina. (Tr. 45 - 49) Applicant also claimed that he recently was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and that, in hindsight, ADHD has contributed to his financial and personal difficulties over the past ten years. (Gx. 4; Tr. 16 - 17) Indeed, his testimony was at times rambling and convoluted. (See, e.g, Tr. 45 - 47) Applicant did not present any corroborating documentation to show he had been diagnosed with ADHD or that he was on medications for such a condition.

In December 2009, Applicant submitted a personal financial statement (PFS) that showed he had about \$100 remaining each month after expenses. His expenses did not include payment of any of the debts alleged in the SOR. More recently, Applicant has suffered work-related injuries and medical problems that have limited his ability to work as much as he was working in 2009. Further, he is now paying another \$205 each month for his student loan rehabilitation.

### **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.

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

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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.

<sup>6</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>7</sup>

## Analysis

### Financial

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.

Applicant’s admissions established the allegations at SOR 1.e - 1.l, 1.k, 1.n, and 1.o. However, his denials placed on the Government the burden of proving the remaining SOR allegations.<sup>8</sup> In support of its case, the Government presented sufficient information to support all of the SOR allegations of unpaid debt totaling in excess of \$37,000. Additionally, Applicant disclosed that he owes another \$30,000 in unpaid student loans that were not alleged. His debts have been accrued since 1995, when he was studying for his associate’s degree. Applicant has not paid any of his debts, and the student loan rehabilitation program he is enrolled in was begun less than six months before the hearing. The record shows only that he made a payment in September 2009. Applicant has also failed to pay even the smaller debts alleged in the SOR despite the fact he has owed some of them for several years. 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), available information shows that Applicant, who appears to be living from paycheck to paycheck, is unable to pay his debts.

By contrast, Applicant was unemployed for long periods between 2006 and 2008. He also had custody of his children with little or no financial assistance from his ex-wife. These facts require consideration of the mitigating conditions 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, the record does not support full application of this mitigating condition because Applicant has not acted responsibly under the circumstances. Granted, there are acceptable reasons why Applicant has so much debt, but he did not enter into the student loan rehabilitation program until 2010, despite having been

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<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

<sup>8</sup> See Directive, E3.1.14.

gainfully employed since 2008. Nor has he addressed in a timely or meaningful way the many smaller debts he has owed for the past few years.

Applicant did not support his claims that he is disputing some of the alleged debts. Although some of his explanations for his medical and utility debts are plausible, there is no way to verify their true status. 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*) does not apply.

Further, this record shows that real concerns remain about Applicant's finances in the future. In December 2009, Applicant had about \$100 remaining after expenses. He claims to have started paying \$205 monthly into the student loan rehabilitation program in June 2010. He also testified that he is making less, due to job-related medical problems, than he did in 2009. Lastly, although he made a passing reference to employer-provided financial counseling, there is insufficient information in the record to conclude that Applicant has ever sought help with his finances. Therefore, the mitigating condition at AG 20 ¶ 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*) does not apply. Based on all of the available information probative of this issue, I conclude Applicant has failed to mitigate the security concerns about his finances.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 47 years old and has been steadily employed since 2008. He experienced a myriad of personal problems around the time of his divorce in 2002, and his employment record was sporadic, at best, between 2006 and 2008. Applicant also averred his problems were caused or exacerbated by the effects ADHD. Applicant was given 17 days after the hearing to provide documentary support of all of his claims, as well as information about his job performance and reputation in the community. He did not avail himself of that opportunity. While it is not mandatory that an applicant be completely debt free, it must be established that one's debts are being addressed in a responsible way. That has not happened here. A fair and commonsense assessment of all of the available information shows that doubts remain about Applicant's finances and his future ability to address his past-due debts. Because protection of the national interest is of paramount importance in these adjudications, such doubts must be resolved in favor of the Government.

## **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.p:           Against Applicant

## **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge