



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 10-02062
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

August 22, 2011

**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant was fired from two jobs for inappropriate conduct and violations of company policy between 2005 and 2007. He also has failed to act on student loans that have been delinquent since 1996. Applicant deliberately withheld from his security clearance application the adverse information about his finances and his employment history. He also deliberately made false statements about his employment history during his subject interviews. Applicant's request for a security clearance is denied.

**Statement of the Case**

On April 28, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew 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 interrogatories<sup>1</sup> to clarify or augment information obtained in his background investigation. Based on the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators could not make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to continue Applicant's access to classified information. On April 7, 2011, 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 personal conduct (Guideline E) and financial considerations (Guideline F).

On April 19, 2011, Applicant answered the SOR and requested a decision without a hearing. On June 9, 2011, after the Government had issued Applicant a File of Relevant Materials (FORM),<sup>4</sup> Applicant requested a hearing. The case was assigned to me on June 24, 2011. Pursuant to a Notice of Hearing issued on June 24, 2011, I convened a hearing on July 12, 2011. The parties appeared as scheduled. DOHA received a transcript (Tr.) of the hearing on July 19, 2011. The Government presented four exhibits identified as Government Exhibits (Gx.) 1 - 4, all of which were admitted into the record.<sup>5</sup> Applicant testified and submitted two exhibits, admitted as Applicant Exhibits (Ax.) A and B.<sup>6</sup> Additionally, I held the record open after the hearing to receive additional information from the Applicant. His post-hearing submissions are admitted as Ax. C and D.

### **Findings of Fact**

Under Guideline E, the Government alleged that Applicant was fired from a job in August 2007 for violating company policy (SOR 1.a); that he was reprimanded that same month for multiple instances of misusing a company credit card (SOR 1.b); and that he was fired from a job in April 2005 for inappropriate conduct (SOR 1.c).

It was also alleged that Applicant deliberately falsified his answers to eQIP question 22 (Your Employment Record by omitting the job terminations alleged at SOR 1.a and 1.c (SOR 1.d), and eQIP questions 28a (debts more than 180 days delinquent) and 28b (debts more than 90 days delinquent) when he failed to disclose a delinquent student loan for which he owes about \$21,000 (SOR 1.g and 1.h).

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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.

<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.

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

<sup>5</sup> I overruled Applicant's objection to the admission of Gx. 4. (Tr. 43 - 50)

<sup>6</sup> I overruled Department Counsel's objection to the admission of Ax. B. (Tr. 57)

The Government also alleged that Applicant deliberately made false statements to a Government investigator during a subject interview on June 8, 2009, when he claimed that he left his job in August 2007 to seek a different job with better pay (SOR 1.e). Finally, it was alleged that Applicant deliberately made false statements to a Government investigator during a subject interview on November 10, 2009, when he claimed that he left his job in August 2007 voluntarily (SOR 1.f).

Under Guideline F, the Government alleged that he owed \$21,000 for the delinquent student loan referred to in SOR 1.g and 1.h. In response to the SOR, Applicant admitted the allegations at SOR 1.a, 1.c, 1.e, 1.f, and 2.a. His admissions are incorporated as findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of fact.

Applicant is 41 years old and is employed by a defense contractor in an information systems technology (IT) position that requires him to have a security clearance. He has worked for his current employer since February 2010. (Tr. 70 - 71) From September 2007 until February 2010, he worked in a similar capacity for another defense contractor that sponsored his current request for clearance. From April 2005 until August 2007, Applicant worked for Company A. From October 2003 until April 2005, he worked for Company B, as an audio-visual technician. (Gx. 1) Applicant also worked for a defense contractor from 1998 until 2003 in a position for which he applied for and was granted a security clearance. (Gx. 2; Tr. 117 - 118)

Applicant and his wife have been married since November 1999. They have three children together, ages 18, 9, and 5. From January 1989 until January 1993, Applicant served in the U.S. Navy. He received an honorable discharge as an Aviation Electronics Technician Third Class (AE3). (Gx. 1; Gx. 2; Tr. 27, 102) Applicant has a good reputation with current coworkers, supervisors, and customers. (Ax. A; Ax. C; Ax. D)

In 1993, Applicant enrolled in a vocational institute to obtain the skills he now uses in the IT industry. He financed his education with federal student loans totaling about \$14,000. After a six-month grace period following completion of his studies, Applicant did not make any payments on his loans. He now owes about \$21,000 after interest. As of June 2011, the debt is being collected through involuntary garnishment of his paycheck. (Ax. C) In November 2009, Applicant was interviewed about his finances by a Government investigator. A review of his finances during that interview showed he had about \$2,600 remaining each month after expenses. (Gx. 2; Gx. 3; Ax. C; Tr. 58, 64, 87 - 93, 110 - 111) Applicant averred that he would soon be able to resolve his student loan debt without adversely affecting his finances. In support of his claim he offered an unexecuted offer of overseas employment with a company that would pay him significantly more than he is making now. The offer is contingent on possession of a security clearance. (Ax. B; Tr. 55 - 61)

Applicant was a supervisor with Company A. He testified that he was initially passed over for promotion in favor of employees with less experience. He was promoted only after he went over his boss's head to complain. This, he claimed, caused his boss to resent him and treat him unfairly. (Answer; Gx. 2; Tr. 64 - 70)

Applicant was counseled on August 1, 2007, for misuse of a company credit card used for fuel on five separate occasions in July 2007. Applicant signed a counseling sheet acknowledging the conduct for which he was counseled. However, at the personal appearance Applicant averred that his use of the card was approved so he could afford to attend his aunt's funeral. (Gx. 4; Answer; Tr. 76, 108 - 109)

On August 23, 2007, Applicant was terminated from Company A for possession of inappropriate materials, such as a sexually explicit computer screen saver, in the workplace, and for failing to return a cable modem belonging to the company. Applicant signed and dated a company form acknowledging the reasons for his dismissal. (Gx. 4) However, when he was interviewed by a Government investigator in June 2009 and in November 2009, he stated that he left Company A on his own because he felt he was being wrongly accused of stealing and because he and his boss did not get along. He also stated he wanted get a job with better pay, and that he did not know he had been fired until his application for unemployment benefits was denied. (Answer; Gx. 2; Tr. 68)

In 2005, Applicant was also terminated from his job with Company B. The stated reason for his dismissal was "inappropriate conduct." Applicant claimed this was his communication with the person who scheduled employees' time off, and that his boss did not approve of Applicant's talking directly to that person. (Gx. 2)

In his April 2009 eQIP, Applicant answered "no" to the questions in Section 22 (**Your Employment Record.** *Has any of the following happened to you in the last 7 years? 1. Fired from a job. 2. Quit a job after being told you'd be fired. 3. Left a job by mutual agreement following allegations of misconduct. 4. Left a job by mutual agreement following allegations of unsatisfactory performance. 5. Left a job for other reasons under unfavorable circumstances.*) As to his omission of his firing from Company B in 2005, Applicant averred that he thought it had happened more than seven years earlier. As to his firing from Company A, Applicant testified, as he had stated in his Answer, that he left that job of his own volition or that, if he was, he did not realize he had been fired. However, he did not reconcile his position with his statement that he became aware of his firing from Company A when he was denied unemployment benefits. Ostensibly, that would have occurred in 2007 or 2008, well before he completed the eQIP.

Applicant also omitted from his eQIP the fact that he had defaulted on his student loans in 1996. He answered "no" to questions in Section 28 (**Your Financial Delinquencies.** *a. In the last 7 years, have you been over 180 days delinquent on any debt(s)? b. Are you currently over 90 days delinquent on any debt(s)?*). When he was interviewed about his finances during his background investigation, he claimed he forgot that he owed a large student loan debt. He also stated that he was paying \$180 each month to a collection agency that held the debt. However, the only documented payments on this debt are the wages that have been garnished since June 2011.

## Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>7</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>8</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 its preliminary decision to deny or revoke an applicant's security clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR.<sup>9</sup> 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>10</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>11</sup>

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<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> Directive. 6.3.

<sup>9</sup> Directive, E3.1.14

<sup>10</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>11</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

## 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 took out about \$14,000 in student loans to finance his vocational training in the mid-1990s. While he initially may not have had sufficient income to pay this debt, when he was interviewed for his security clearance in 2009, he had significant cash remaining after expenses each month with which to pay his debt. For 15 years, Applicant did not act to pay or otherwise resolve his delinquent student loans. It is only through a recent involuntary wage garnishment that the debt is now being paid. All of the foregoing requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*).

By contrast, none of the AG ¶ 20 mitigating conditions apply. His financial problems are recent because a significant delinquency remains unpaid after 15 years. Although his inability to pay when he left school in 1996 may have been beyond his control, at some point Applicant had sufficient income to make payments and decided not to. Current payments through a wage garnishment do not constitute a good-faith effort to resolve his debts, and Applicant's information did not establish that he has received any financial counseling or that his financial problem is under control. On balance, Applicant has not mitigated the security concerns about his delinquent debt.

### Personal Conduct

The security concern about Applicant's workplace conduct, his eQIP omissions, and his statements to Government investigators is stated at AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

It is clear from Gx. 4 that Applicant was counseled about misuse of a Company A credit card. It is also clear that he was involuntarily terminated from both Company A and Company B. Applicant's claim that he did not know he had been fired from Company A is undermined by his signature on Company A forms in which he

acknowledged the actions taken against him. Even if he was not then aware of his termination, he was made aware soon thereafter when, as he claimed in his statement to an investigator, he was denied unemployment benefits. All of the information probative of his intent when he omitted from the eQIP his firing from Company A shows that he meant to withhold that information from the Government.

As to his omission of his firing from Company B, I conclude that he also did so intentionally. It was not credible, in light of all of the information about his employment history, that he thought that the first of two consecutive firings occurred more than seven years before the eQIP in 2009, when it actually occurred less than four years earlier. It is equally untenable that Applicant forgot that he owed as much as \$21,000 in delinquent student loans.

During two of his three subject interviews with Government investigators, Applicant continued to provide false information about his firing from Company A. All of the foregoing, along with adverse information about the misconduct leading to Applicant's two job terminations, requires application of the disqualifying conditions at AG ¶ 16 (a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*); AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*); and AG ¶ 16(d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources*).

In response, Applicant did not establish that he made a prompt, good-faith effort to correct his eQIP omissions, or that there were any special circumstances or improper advice from qualified persons that may have justified making false statements to the Government. Further, Applicant has completed previous security clearance applications and knew or should have known what information the Government requires as part of any request for a clearance. Finally, making multiple false statements to any agency of the United States concerning a matter within its jurisdiction is a violation of federal criminal law. More important, it is a fundamental breach of a basic tenet of the Government's personnel security programs. Thus, it cannot be considered minor. Based on all of the foregoing, I conclude that the record does not support any of the mitigating conditions listed at AG ¶ 17. Applicant did not mitigate the security concerns raised by the Government's information about his personal conduct.

## **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 41 years old, has been married for about 12 years, and is the father of three children. Despite being fired from two jobs in 2005 and 2007, overall he has been steadily employed since at least July 2000. He also served in the Navy until 1993 and obtained sought after technical skills thereafter. To his credit, he has a job offer in hand that would add to his financial security. However, Applicant has also demonstrated an inability to abide by workplace rules and regulations, he has ignored a significant financial obligation for 15 years, and he has not been truthful or candid in response to reasonable inquiries about his employment history and finances. The positive information about Applicant's military service and current job performance does not outweigh the doubts about his suitability for a clearance raised by the adverse information in his background. Because protection of the national interest is the principal aim of security clearance decisions, those doubts must be resolved against the Applicant.

## **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 E:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## **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. Request for security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge