



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



In the matter of )  
)  
) ISCR Case No. 10-02343  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

March 25, 2011

**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

**Statement of the Case**

On September 17, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required for his employment 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.

On October 18, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).<sup>2</sup> In an undated Answer to the SOR, Applicant admitted all the allegations under Guideline F except subparagraphs 1.c., 1.g. though 1.i., 1.l., 1.m., 1.t., and 1.y. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on January 10, 2011, and the case was assigned to me on January 13, 2011. DOHA issued a Notice of Hearing on January 31, 2011, and I convened the hearing as scheduled on February 24, 2011. The Government offered seven exhibits, marked as Government Exhibits (GE) 1 through 7. Applicant testified, and offered two exhibits, admitted as Applicant's Exhibits (AE) A and B. DOHA received the transcript on March 3, 2011.

### **Findings of Fact**

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 49 years old, graduated high school and served one month in the U.S. Navy before receiving a medical discharge in 1979. He earned some college credits in 1984. He married in 1996, and has four children. One is an adult, living independently. Applicant supports his wife and the three children living at home, who are 9, 13, and 16 years of age. (GE 1; Tr. 26-29)

Applicant has worked for a defense contractor since July 2008. He is currently an administrative assistant. From 2003 to 2005, he was a project control analyst with another employer, dealing with the financing and budgeting of special projects. His security clearance application shows continuous employment from 2001 to the present. However, he testified that he had short periods of days or weeks when he was unemployed, during which time he received unemployment benefits. He was also out of work for three months following a car accident in June 2007.<sup>3</sup> He has worked for temporary agencies at

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

<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>3</sup> None of the medical debts in the SOR relate to this accident. Applicant testified that the bills resulting from the accident were paid by Medicare or Medicaid. (Tr. 42)

times, and most of his positions were as an administrative assistant. (GE 1; Tr. 30-32, 36-37, 41-43)

In 1979, Applicant received a medical discharge from the Navy after he had an asthma attack during basic training. He continues to have asthma, as well as severe headaches, which have resulted in his accruing numerous medical debts. Four of the medical debts are small, ranging from \$26 to \$57. (Tr. 37-39)

Applicant stated in his December 2009 security interview that he received lower pay in the administrative assistant positions, and his debts became delinquent. Over the years, he received notices from collection agencies. He used to throw the notices away, but since summer 2009, he kept the notices and planned to pay the accounts. Of the 27 debts the security investigator raised at the interview, Applicant did not recognize 25 debts. He told the investigator that he planned to begin paying his debts. (GE 3)

Applicant admitted that his delinquencies result from his “neglect, irresponsibility, and procrastination.” In his July 2010 Interrogatory response, he stated that he did not recognize some of the debts, would pay some between August and December 2010, and would work with a debt-repair service on others. As of the date of the hearing, he had not followed up on his statements that he would pay several debts by the end of 2010. In his Answer to the SOR, Applicant stated that he had satisfied several debts or was working with the creditor. He admitted at the hearing that he had not taken those steps at that point in time. (GE 2; Tr. 49, 109)

Applicant completed a personal financial statement (PFS) in July 2010. He testified that he rushed through it and did not fill it out properly. His current net monthly income is \$2,800. His wife earns \$1,200 per month gross as a school aide, but only when she can work full-time hours. His monthly expenses are approximately \$2,000 per month. Counting only Applicant's income, he has \$800 net remainder each month. He does not have a savings account, and does not contribute to a retirement plan. He has opened a credit card account since July 2010, which is past due. Applicant is current on his past income tax obligations, but he owes \$2,000 in federal and state income taxes for his most recent filing. His tax preparer enrolled him in a payment plan. As of the hearing date, Applicant had not been notified as to the payments he will be required to make. (GE 3; Tr. 103-112)

Applicant submitted a list showing contacts with his creditors over the six weeks since he received the Government's hearing exhibits in January 2011. The list indicates how he planned to handle each SOR debt. Subsequently, he contacted a credit-repair agency, and was advised not to contact or pay any creditors, as the company would handle debt repayment. He submitted an email from the company dated February 22, 2011. It notes that the plan requires him to pay \$155 per month starting March 15, 2011. It discusses two medical bills

(allegations 1.b. and 1.f.) that Applicant must pay on his own because they are too small to include in the plan. However, it does not contain specific information such as the names of the creditors to be included in the plan, or the amount that will be disbursed to each creditor. The record contains no evidence of payments by Applicant. (AE A, B; Tr. 20-25)

The following 25 SOR debts accrued between 2003 and 2009, with 17 of the 25 debts becoming delinquent in 2009. They total almost \$10,000. The delinquencies appear in Applicant's credit reports of November 2009 and August 2010. (GE 4, 5, 6, 7)

- Medical debts, \$2,498 (allegations 1.a., b., d., e., f., j., l., q., y.)
- City government parking tickets, \$205 (allegations 1.u., v.)
- Utilities, \$1,394 (allegations 1.c., 1.h.)
- Credit cards, \$2,709 (allegations 1.g., 1.i., 1.o.)
- Payday loans, \$553 (allegations 1.k. and 1.p.)
- Insurance, \$234 (allegation 1.r.)
- Hotel, \$100 (allegation 1.n.)
- Bank card overdrafts, \$1,981 (allegations 1.s., 1.t., 1.w., 1.x.)
- Miscellaneous, \$269 (allegation 1.m.)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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 Guideline F (Financial Considerations) at AG ¶ 18.

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<sup>4</sup> Directive 6.3

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have 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. Therefore, the Government has a compelling interest in ensuring each applicant possesses the judgment, reliability and trustworthiness to 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

### Guideline F, Financial Considerations

AG ¶ 18 expresses the overall security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges \$9,900 in delinquent debt.

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

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

Applicant's oldest debt became delinquent in 2003. Applicant's history demonstrates a failure to meet his financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(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;

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

(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;

Although Applicant's debts have been accruing for years, they are not in the distant past, as almost \$10,000 remains unpaid. Applicant's inattention to his numerous debts, even during the security clearance process when he was on notice that they were a concern, indicates that delinquencies may continue in the future. His failure to make consistent attempts to resolve his debts over the years raises questions about his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) focuses on situations where conditions beyond an applicant's control affect his ability to meet his financial obligations. Applicant has had some health issues. However, his medical debts are relatively small, four being under \$100. He did suffer injuries from an unexpected car accident in 2007. Although the resulting medical bills did not cause his financial problems, he was out of work for three months. Applicant's intermittent unemployment was also beyond his control, but it was only for short periods, and he received unemployment compensation. For full application of this mitigating condition, an applicant must act reasonably in response to unforeseen circumstances. Applicant has not done so. He has failed to take concrete steps to pay his debts, most of which became delinquent in 2009, when he had been working steadily for the previous two years. Applicant receives only partial mitigation under AG ¶ 20(b).

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant accrued 25 debts between 2003 and 2009 and has done little to resolve them. He testified

that he made contact with several creditors, but he did not make any payments. Despite being aware that his finances placed his security clearance application in jeopardy, he failed to take steps to pay even small debts of less than \$100. Although he initiated a plan with a credit-repair service, it was not finalized until after the hearing. No details of the plan were provided, and it is too recent for him to be able to show that he will make payments or adhere to the plan. An applicant must demonstrate a track record of efforts to resolve debts, and Applicant's efforts are too recent to have established such a record. He denied several debts in his Answer, but provided no evidence that he informed the credit reporting agencies or took any other steps to either resolve or document his disputes. AG ¶ 20(d) and 20(e) cannot be applied.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a):

(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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was candid during the hearing, admitting that he has been negligent about his debts. The record supports his assessment. Although a mature adult of 49 years, he has not demonstrated reliability in handling his financial obligations. His lack of diligence about his obligations for the past several years is a serious concern. He was on notice that debts were an issue for his security clearance since he completed his application in September 2009. He was reminded of his debts at his security interview, and again when he responded to Interrogatories. At each juncture, he stated he would take action on his debts. Yet he did not act in the year and a half before the hearing, even to

pay small debts of \$25 to \$50. He did not set up a payment plan until two days before his hearing. Although Applicant recently took a promising step toward resolving his debts, it does not outweigh his inaction over the past several years. His conduct does not demonstrate reliability or good judgment.

A fair and commonsense assessment of the available information shows that Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

### **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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraphs 1.a. – 1.y.	Against Applicant

### **Conclusion**

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

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RITA C. O'BRIEN  
Administrative Judge