



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 10-06198
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Kilmartin, Esquire, Department Counsel  
For Applicant: Jose Pastrana-Silva, Esquire

06/22/2012

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his financial problems and his personal conduct. Applicant incurred more than \$111,000 in delinquent debt for 30 accounts. Although some of his debts arose after a business failure and subsequent employment problems between 2006 and 2008, he failed to act responsibly when his income was restored in 2008. He also deliberately omitted information about his financial problems when he submitted a security clearance application required for his current job. His request for a security clearance is denied.

**Statement of the Case**

After reviewing the results of Applicant’s 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

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

continue Applicant's access to classified information. On March 10, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)<sup>2</sup> for personal conduct (Guideline E) and financial considerations (Guideline F).

Applicant answered the SOR (Answer) on July 5, 2011, and requested a hearing. On December 12, 2011, the case was assigned to a DOHA administrative judge for hearing. However, it was determined that Applicant no longer held a job that required a security clearance, and the administrative judge returned the case for administrative closure. On April 11, 2012, Applicant notified DOHA that he had been offered a position, and he renewed his request for a hearing. The case was assigned to me on May 24, 2012.

Pursuant to a Notice of Hearing issued on May 25, 2012, I convened a hearing in this matter on June 6, 2012. The parties appeared as scheduled, and Applicant waived his right to 15-days advance notice of hearing.<sup>3</sup> The Government presented six exhibits, which were admitted as Government's Exhibits (Gx.) 1 - 6. Applicant testified and two exhibits, which were admitted as Applicant's Exhibits (Ax.) A and B. DOHA received a transcript (Tr.) of the hearing on June 14, 2012.

### **Findings of Fact**

In the SOR, the Government alleged, under Guideline F, that Applicant owed \$111,234 for 30 past-due debts (SOR 1.a - 1.dd). Applicant admitted all of the allegations.

Under Guideline E, it was alleged that Applicant deliberately omitted relevant and material information about his finances, specifically the debts alleged at SOR 1.a - 1.dd, from an Electronic Questionnaire for Investigations Processing (eQIP) he signed and submitted on March 19, 2010 (SOR 2.a). Applicant did not respond to this allegation when he submitted his Answer. However, at the hearing he denied of this allegation. (Tr. 9 - 12)

Applicant is 48 years old. He and his wife have been married since October 1986, and they have three children ages 24, 20 and 17. The younger two children still reside with Applicant and his wife.

Applicant served in the U.S. Army from May 1986 until he was honorably discharged in May 2001 with numerous decorations and a 40% disability. He was an enlisted man trained as a mechanic on military vehicles, including the High Mobility Multipurpose Wheeled Vehicle (HMMWV), better known as the Humvee. Applicant held a security clearance while in the military, but it has lapsed since 2001. He submitted an

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<sup>2</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).

<sup>3</sup> Tr. 9; see also Directive, E3.1.8.

eQIP in March 2010 to apply for an industrial security clearance required by his employment with a defense contractor.

After leaving the Army, Applicant started his own automotive parts and repair business, through which he supported his family until the business failed in about 2006. He then went into business repairing and reselling cars, with an emphasis on the civilian version of the Humvee, known as the Hummer. This business also failed. Applicant attributed this business failure to a drop in demand for that vehicle caused by a rise in gas prices and a general economic downturn in the state where he lived and worked. From 2006 until 2008, Applicant supported his family through self-employment as a mechanic. He also tried to start a business converting Hummers to run on bio-diesel fuel. However, his income was reduced significantly during this time. To compensate for his reduced income, Applicant and his wife, who has rarely worked outside the home, relied on numerous credit cards to pay their expenses. They were able to stay current on their accounts by paying only the minimum due each month. However, the interest accruing on each account raised balances to levels they would not be able to pay. (Gx. 1; Gx. 3; Tr. 36 - 39, 99 - 101)

In September 2008, Applicant was hired for technical advising and repair work on Humvees at military installations throughout the United States and abroad. Applicant was sent to work in Afghanistan between November 2008 and April 2009, and in Iraq between May 2009 and November 2009. (Gx. 1; Tr. 42 - 43, 103 - 105)

Also in 2008, around the time he was hired, Applicant and his wife consulted with a bankruptcy attorney because they wanted to file a Chapter 13 petition for structured repayment of their debts. They had determined that, because they could only make minimum monthly payments on their credit cards, they would never be able to finish paying those debts. They also considered filing for Chapter 7 liquidation of their debts, but chose Chapter 13 because it would actually pay off some of their debt. (Gx. 2; Gx. 3; Tr. 44 - 45)

When he was interviewed by an Office of Personnel Management (OPM) investigator for his security clearance in May 2010, Applicant stated that he had not yet filed a bankruptcy petition because he had been sent overseas for work. He told the investigator that he intended to file a petition by June 2010. However, it was not until August 2011 that he and his wife actually filed a Chapter 13 petition. Under an approved repayment plan, Applicant is required to pay the bankruptcy trustee \$1,975 each month for five years. As of the hearing, he had made seven payments dating to the start of the plan in October 2011. (Gx. 3; Gx. 6; Ax. B; Tr. 47 - 49)

The Chapter 13 petition listed total liabilities of \$472,126 against total assets of \$157,456. Of the liabilities, Applicant declared \$192,962 in unsecured debt. Applicant also listed his income for 2009 as \$187,660, and for 2010 as \$107,204. (Gx. 6; Tr. 106 - 107)

Applicant averred that his bankruptcy attorney told him in 2008 to stop paying his debts and to refer all creditors to the attorney. Aside from the two mortgages on his house and his two car payments, he did not make any payments on any of his debts

after about October 2008. This resulted in continuing accrual of interest and penalties for most of his credit card accounts. Several of his debts were referred to collection agencies. During questioning about his debts at the hearing, Applicant testified that he did not know the details of any of the debts listed in the SOR, and he confirmed that they had not been addressed between 2008 and August 2011. (Gx. 3; Tr. 44 - 47, 60 - 79)

The debts listed in the SOR are documented in credit reports obtained in April and September 2010, and in Applicant's bankruptcy petition, which also lists unsecured debts not alleged in the SOR. The SOR allegations average about \$3,700. The largest debt alleged is \$12,000, owed for a bank credit card (SOR 1.k) Applicant also owes six debts with balances less than \$500 (SOR 1.l - \$18; SOR 1.u - \$418; SOR 1.w - \$308; SOR 1.y - \$488; SOR 1.z - \$224; SOR 1.dd - \$274) Applicant has not made any payments on these lesser debts since 2008. (Gx. 4 - 6; Tr. 69 - 85)

Applicant submitted a personal financial statement (PFS) in response to DOHA interrogatories in October 2010. At the time, he was gainfully employed with the company that sent him overseas to work at military installations. He declared therein that, after expenses and payment of his home mortgages and auto loans, he had about \$1,818 remaining each month. His expenses did not include his current Chapter 13 payment of \$1,975. (Gx. 2; Tr. 87 - 92)

In November 2011, Applicant was laid off through a reduction in force from the job he held when he submitted his PFS. He did not hold another job until March 2012, when he worked for one month for a defense contractor at a military installation in the United States. On March 30, 2012, he was offered a position with another defense contractor and gave notice so he could accept that job, which requires a security clearance. However, the job offer is in abeyance and Applicant is unemployed pending completion of this case. (Ax. A; Tr. 114 - 115)

Since being laid off in November 2011, Applicant has supported himself and his family through independent mechanic's work, which he calls "side jobs." He has also received loans from his father. (Tr. 43, 46 - 60)

Applicant did not disclose any of his debts or other financial problems when he submitted his eQIP in March 2010. Applicant knew when he submitted the form that he had not paid any of the debts listed in the SOR for more than a year. Before he stopped paying in 2008, his debts were up-to-date because he was at least making minimum payments each month. He claimed at the hearing that he thought the advice his bankruptcy attorney gave him, to stop paying his unsecured debts, somehow meant that the debts would not become delinquent. Applicant also knew that if he had stopped paying his mortgages and car loans, that the property securing those loans would be repossessed. Applicant has not documented his attorney's advice to stop paying his debts. (Tr. 53, 116 - 117)

## Policies

A security clearance decision is intended to resolve whether it is clearly consistent<sup>4</sup> with the national interest 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 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 “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>

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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.

<sup>7</sup> See *Egan*; AG ¶ 2(b).

## Analysis

### Financial Considerations

The Government presented sufficient information to support the SOR allegations of 30 delinquent debts totaling \$111,234. Applicant admitted owing all of the debts. He also admitted that he stopped paying the debts in 2008, despite having been hired for a job that paid him more than \$100,000 in 2009 and 2010. Applicant's debts are comprised mostly of credit cards used to support his family after his businesses failed and he was either unemployed or under-employed until 2008. This information raises a security concern about Applicant's finances addressed, in relevant part, at AG ¶ 18 as follows:

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.

More specifically, the Government's information 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*).

Of the mitigating conditions listed at AG ¶ 20, I have considered the following:

(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;

(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

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

Applicant's debts became delinquent in 2008, after he stopped paying them on the advice of a bankruptcy attorney. However, Applicant has not adequately explained why almost three years then passed before he actually filed his Chapter 13 petition. Although Applicant established that his financial problems arose, in part, from the failure of two automotive businesses after he left the Army in 2001, he did not establish that he

acted responsibly to deal with his financial challenges. There is no indication that he and his wife tried to reduce expenses or negotiate with their creditors. It appears only that Applicant abused personal credit to meet their expenses. Even when he found work that paid him more than \$100,000 annually, and after he told an OPM investigator that he would file a bankruptcy petition by June 2010, he did not act until more than a year later.

Further, the record does not show that Applicant's finances are under control. He is obligated to pay almost \$2,000 each month as part of the Chapter 13 debt repayment plan. He is not currently working because his security clearance has not been granted. However, according to the PFS he provided when he was gainfully employed in 2010, his monthly net remainder after expenses was about \$200 less than his current monthly bankruptcy obligation. Applicant has failed to mitigate the security concerns raised by the Government's information about his finances.

### **Personal Conduct**

Available information is also sufficient to raise a security concern about Applicant's personal conduct. As stated at AG ¶ 15,

[c]onduct 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.

The Government alleged in SOR 2.a that Applicant's negative answers to eQIP Section 26 (Financial Record) questions 26.f (loan default in the previous seven years), 26.g (debts or loans referred for collection in the previous seven years), 26.h (credit card charge offs in the previous seven years), 26.m (more than 180 days delinquent on any debt in the previous seven years), and 26.n (more than 90 days delinquent on any debt at the time of eQIP submission) were false statements made intentionally by the Applicant to withhold relevant and material information from the Government. Applicant denied the allegation.

The Government presented information that established that Applicant, in fact, answered "no" to the questions at issue. The Government also established that, when Applicant filled out the eQIP in March 2010, he knew he had not paid numerous credit card debts for more than a year. As reflected in a credit report obtained by OPM in April 2010, Applicant had 15 credit card debts that had been referred for collection. This information does not show that Applicant had defaulted on loans, but it does show that, when he applied for his clearance, he knew or should have known that he had credit account charge offs and referrals for collection, and that he had been more than 180 days delinquent on some of his credit accounts, and that he was, at that time, more than 90 days past-due on some of his credit accounts. I conclude from all of the available information that Applicant intended to falsify his answers and withhold from the Government adverse information about his finances.

In response, Applicant averred that he believed the advice of his bankruptcy attorney meant that he either was not delinquent on his accounts or that he did not have to list them. Applicant did not supply sufficient information to support his position. For example, aside from a copy of a retainer agreement with his attorney, there is no written corroboration regarding legal advice that may support Applicant's claim that he reasonably believed he was not delinquent or did not have to report his debts.

All of the foregoing supports application of the disqualifying condition 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.

Of the mitigating conditions listed under AG ¶ 17, only the following are potentially applicable here:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

However, these mitigating conditions do not apply. There is no indication that Applicant ever tried to disclose his financial problems before he was interviewed by OPM in May 2010. Although, in fairness, the summary of that interview did not address Applicant's omissions. Nor does AG ¶ 17(b) apply. As discussed above, Applicant's reliance on his bankruptcy attorney's advice was not sufficiently documented. Nor did Applicant show how that advice pertained to his obligation to be candid in his eQIP answers.

Finally, AG ¶ 17(c) does not apply. Deliberately making 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. The submission of his e-QIP was not Applicant's first interaction with the Government regarding his suitability for a security clearance. He held a security clearance while he was in the Army, and knew or should have known he was expected to be candid and



forthcoming in response to the Government's reasonable inquiries. Yet he decided to withhold important information needed to accurately assess his clearance suitability. Applicant has not mitigated the security concerns under the guideline because questions remain about his willingness to be truthful in his dealings with the government. Overall, the information presented in response to the Government's security concerns about Applicant's personal conduct does not support a conclusion that his conduct will not recur or that his judgment is suitable for access to classified information.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). I further note that Applicant is a 48-year-old mechanic and Army veteran seeking employment with a defense contractor that would utilize his technical expertise. He is a devoted husband and father who experienced significant financial difficulties beginning in about 2006. Use of personal credit under such circumstances is, to some degree, understandable. However, Applicant did not exhibit good judgment when, even after he began earning a good income, and after he retained a bankruptcy attorney, he did not act for almost three years to resolve his financial problems. Additionally, he exhibited poor judgment and a lack of trustworthiness by withholding from the Government information that was relevant and material to an assessment of his suitability for access to classified information. A fair and commonsense evaluation of all of the available information shows that doubts remain about Applicant's suitability for a clearance. Because protection of the national interest is of paramount importance in these adjudications, 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 F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.dd:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge