



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-08118
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2013

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate security concerns raised by a delinquent credit card account for which he owes \$24,890. His request for a security clearance is denied.

**Statement of the Case**

On March 2, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to renew a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, which included his responses to interrogatories from Department of Defense (DOD) adjudicators,<sup>1</sup> it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>2</sup>

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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.

On September 19, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed at Guideline F (Financial Considerations).<sup>3</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On November 27, 2012, Department Counsel issued a File of Relevant Material (FORM)<sup>4</sup> in support of the SOR. Applicant received the FORM on April 16, 2013, and timely provided information in response to the FORM. The record closed on May 20, 2013, and the case was assigned to me on May 28, 2013.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$24,890 for a delinquent credit card account (SOR 1.a). Applicant denied the allegation. (FORM, Items 1 and 3).

Applicant is 54 years old and has worked as an information systems security officer (ISSO) for his current employer since July 2010. He has held similar positions for other defense contractors since about 1999. He also has held a security clearance for his employment over the same period. (FORM, Item 4)

Applicant and his wife have been married since September 1999. They have one child, age 16. Applicant was previously married from March 1981 until he was divorced in November 1987. Two children, now in their 30s, were born during that marriage. (FORM, Item 4)

After he submitted his most recent clearance application in March 2011, Government investigators obtained a credit report. That report attributed to Applicant the delinquent credit card account alleged at SOR 1.a. The account was listed as a joint obligation and had been delinquent since February 2011. When he was interviewed for his clearance on March 24, 2011, he denied any knowledge of that account and stated he would not pay a debt that is not his. (FORM, Items 6 and 7)

In response to interrogatories from DOD adjudicators, Applicant denied the account was his and averred that it belonged to his current wife. In support of this claim, he provided a letter addressed to his wife from a collection agency to whom the account had been transferred. Applicant was also asked to provide a personal financial statement (PFS), but he did not comply with that request. (FORM, Item 7) In support of his response to the SOR, Applicant provided a letter from a debt resolution company representing his wife in negotiations to resolve a delinquent credit account from the same creditor alleged in SOR 1.a. (FORM, Item 3) However, the account information in the collection letter and in the debt resolution letter does not match the information about SOR 1.a in either of the credit reports contained in the FORM (FORM, Items 5 and 6).

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<sup>3</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government's case.

## Policies

Each security clearance 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 policy 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 determinative of a conclusion for or against an applicant. 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.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>7</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>9</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard

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<sup>5</sup> Directive, 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive, E3.1.14.

<sup>8</sup> Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>10</sup>

## Analysis

### Financial Considerations

By denying the SOR 1.a allegation, Applicant created a controverted issue of fact. Accordingly, the burden remained with the Government to present sufficient information in support of SOR 1.a.<sup>11</sup> The information in both credit reports showed that Applicant was at least jointly liable for the credit card listed at SOR 1.a. That account has not been paid since February 2011. These facts raise a security concern 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, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Because the Government met its burden of production, the ultimate burden of persuasion shifted to Applicant to refute, explain, or mitigate the security concerns raised by the Government's information. Applicant failed to show that the alleged debt is not his or that he has taken action to pay or otherwise resolve the debt. Further, because he did not provide requested financial information in response to DOD interrogatories, the current state of his finances cannot be assessed. In short, there is no basis for application of any of the AG ¶ 20 mitigating conditions. Applicant has not adequately addressed the security concerns about his finances.

### 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, has been employed in the defense industry since 1999, and is presumed to be a responsible

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<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

<sup>11</sup> Directive, E3.1.14.

adult. The information he submitted in response to the Government's information does not provide a basis for finding that the single alleged debt is not his or that his finances do not raise reasonable doubts about his suitability for continued access to classified information. The Government's compelling interest in protecting its sensitive information requires those doubts be resolved against granting access to classified information.

### **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:	Against Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge