



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-09502
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

03/20/2013

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his finances. Despite having the resources to do so, Applicant has not acted to resolve several longstanding delinquencies, and he failed to document claimed disputes of some of his debts. Clearance is denied.

**Statement of the Case**

On April 20, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his work as an employee of a federal contractor. After reviewing the results of the ensuing background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's access

to classified information.<sup>1</sup> On October 5, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline<sup>2</sup> for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on December 19, 2012, and I convened a hearing on January 16, 2013. DOHA received the transcript of hearing (Tr.) on January 30, 2013.

Department Counsel presented Government Exhibits (Gx.) 1 - 6, which were admitted without objection. (Tr. 19 - 25) Applicant testified and proffered eight exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - H. (Tr. 26 - 32, 34 - 35, 67 - 71) Additionally, I left the record open after the hearing to receive additional information from Applicant. However, no post-hearing submissions were received and the record closed on February 1, 2013.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed approximately \$24,707 in past-due debts for 14 accounts specified in SOR 1.a - 1.n. Applicant admitted SOR 1.d and 1.e. He also admitted SOR 1.f and 1.m, but averred that he was not responsible for the debts because they no longer appeared on his credit report due to age. He denied, with explanations, the remaining allegations. (Answer) Applicant's admissions are incorporated herein as facts. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 50 years old and employed by a defense contractor in support of military training efforts. He served in the U.S. Army in special operations from 1981 until retiring as a sergeant first class in 2002. He has worked for defense contractors since 2002 using skills learned in the Army to help train service members for combat operations. Applicant was hired by his current employer in September 2008, but has worked at the same location since April 2004. His performance evaluations from his current employer show him to be an excellent employee. Applicant has held security clearances up to the top secret level with eligibility for access to sensitive compartmented information (SCI) for more almost 30 years. However, in 2010, the Department of the Army revoked his SCI access because of security concerns about his finances. (Gx. 1; Gx. 3; Ax. A)

Applicant and his wife have been married since July 2002. He was previously married from 1986 until 2000. He has one adopted child from that marriage for whom he pays \$500 support each month. Applicant's current wife has three daughters from a previous marriage, all of whom were living with her when she married Applicant.

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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> 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).

Applicant began experiencing financial problems in 2003 and 2004. After he retired from the Army, Applicant found work in an area with a cost of living higher than he anticipated. Although he may have struggled financially, there is no indication he fell behind on his bills. However, when he remarried in 2002, he became obligated to support three stepdaughters in addition to his own child's support payments. In 2004, he executed a voluntary repossession of a car on which he could no longer make payments. (Answer; Gx. 3; Gx. 4; Tr. 12 - 13)

In 2004, Applicant and his family moved to their place of residence in another state when he was hired by a previous defense contractor. Although the cost of living was lower than before, he continued to struggle financially. When he submitted his April 2010 eQIP, he disclosed delinquent debts owed to Bank of America as collection accounts for auto loans and credit accounts. One of the accounts, a delinquent \$8,000 credit card account, is alleged at SOR 1.m, and he discussed it with investigators in subject interviews in June 2010 and June 2011. In response to the SOR, Applicant admitted the debt was his, but implied that he is no longer obligated to pay it because it no longer appears on his credit report. The debt remains unpaid. (Answer; Gx. 1; Gx. 3; Gx. 4; Tr. 12, 28 - 29, 45 - 47)

The background investigation initiated by Applicant's eQIP developed information about other debts. Investigators asked him about those debts in the aforementioned subject interviews. Some of those debts are alleged in the SOR. I make the following findings of fact regarding those allegations:

- SOR 1.a alleges an unpaid civil judgment against Applicant for \$5,449. The credit reports submitted by Government do not reflect this debt. However, from Applicant's subject interviews, his responses to DOD interrogatories and the SOR, and his testimony at hearing, it is apparent that he knows the plaintiff in this matter to be his former landlord at the home he rented before moving to his current residence in 2004. In response to interrogatories, he implied prior knowledge of this debt when he stated, "[t]his account has been dropped from my current credit report." When he was interviewed in 2010, he had not previously been aware of this judgment, which likely was entered by default after Applicant left the state. As of the hearing, Applicant had not taken any action to verify or resolve this debt despite telling an investigator in June 2010 that he would address this matter. (Answer; Gx. 2 - 5; Tr. 34 - 38, 65, 68)

- SOR 1.b alleges a delinquent cable television account for \$1,074. This account is listed in both credit reports. In response to DOD interrogatories and the SOR, Applicant acknowledges having an account with this cable provider, but disputes without corroboration, the validity of this account. (Answer; Gx. 2; Gx. 4; Gx. 5; Gx. 6; Tr. 38 - 39)

- SOR 1.c alleges an unpaid debt to an online catalogue company for \$472. The creditor was discussed with Applicant in June 2010 and the debt is documented in both credit reports; however, Applicant denies having an account with this

creditor. He claims to have disputed this debt, but provided no documentation showing efforts to resolve the matter. (Answer; Gx. 2; Gx. 4 - 6; Tr. 39 - 40, 39 - 40)

- SOR 1.d alleges a delinquent credit card account for \$2,881. Applicant admitted this debt, which became delinquent around 2004. It is also documented in his credit reports and was discussed during both of his subject interviews with government investigators. However, he also stated that by the time he was able to repay the debt, he "elected to let the debt expire and fall off [his] current credit report." This debt remains unpaid. (Answer; Gx. 2 - 6; Tr. 40, 67)

- SOR 1.e alleges a debt for a delinquent cell phone account for \$1,330. Applicant admitted this debt, which he averred began as a \$200 charge for early termination. Applicant has not paid this debt. (Answer; Gx. 3; Gx. 5; Tr. 40, 67)

- SOR 1.f alleges a delinquent credit card debt for \$975 past-due on a \$6,270 balance. In response to DOD interrogatories, Applicant denied any knowledge of this creditor and that he was disputing the account with credit reporting agencies. However, in response to the SOR, Applicant admitted he once had an account with this creditor, and an account with this creditor was discussed with Applicant at his June 2010 interview. He has not paid it because "by the time [he] was able to repay the debt the debt was over 6 years old and ... removed from [Applicant's] current [credit] report." (Answer; Gx. 2 - 3; Tr. 40 - 41)

- SOR 1.g, 1.j, and 1.k allege delinquent medical account debts totaling \$2,259. Applicant is aware of these debts, but denies they are his obligations. Instead, he insists that the medical care was rendered for one of his wife's daughters, for whom their father is obligated to provide medical insurance. Applicant and his wife testified that his stepdaughter's care was covered by Applicant's military medical insurance, and that the debts actually represent about 20% of the total cost. Applicant's wife is adamant that they not repay these costs, citing her ex-husband's obligation for his children's medical care. The debts do not appear on either of the credit reports submitted at the hearing. (Answer; Gx. 2 - 6; Tr. 13, 41, 43 - 44, 51 - 53, 56 - 58)

- SOR 1.h alleges a past-due \$539 debt to an online catalogue company. Applicant denies that he ever had an account with this creditor. Although this creditor was among those addressed with Applicant in his June 2010 interview, it is not reflected in either of the credit reports presented at the hearing. (Answer; Gx. 2 - 6; Tr. 42 - 43)

- SOR 1.i alleges a past-due credit card debt for \$60 on a \$323 balance. Applicant admits he had an account with this creditor, but avers it was paid after being "frozen" for non-payment. It does not appear on either of his current credit reports. (Answer; Gx. 2; Gx. 5 - 6; Tr. 43)

- SOR 1.l alleges a delinquent credit card account in collection status for \$6,067 due on a \$6,270 balance. In response to the SOR, Applicant denied owing a debt to the named collection agency. When he was asked by an investigator in June 2010 about a debt owed to the original credit card company listed in SOR 1.l, he averred he had no knowledge of a such debt. This debt does not appear in either credit report. (Answer; Gx. 4 - 6; Tr. 44 - 45)

- SOR 1.n alleges Applicant owes \$181.92 to the county where he lived until 2004. This debt is being enforced through a civil judgment in favor of the county. Applicant states in his Answer that this "is a debt I do not know about...I am currently trying to clear up this matter with this agency." At his hearing, he stated that he had not yet taken any action to verify the accuracy of this allegation. He was asked about this judgment in August 2012, but he provided no information as requested. It does not appear on either of the credit reports in evidence and the debt was not addressed during either of his subject interviews. (Answer; Gx. 3 - 6; Tr. 47 - 50, 81)

Applicant and his wife testified about their plan to resolve Applicant's past-due debts. However, they provided no documentary corroboration of those efforts or of their claimed disputes of some of his debts. As to Applicant's current finances, his August 2012 personal financial statement (PFS) disclosed income and expenses resulting in about \$1,410 of positive monthly cash flow. Applicant's current finances, excluding past delinquencies, appear to be sound. He has not incurred additional past-due debt. He is meeting all of his current financial obligations. (Answer; Gx. 2; Tr. 68 - 69)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>3</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). 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.

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<sup>3</sup> See Directive. 6.3.

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>4</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>5</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>6</sup>

## Analysis

### Financial Considerations

Applicant admitted some of the allegations but denied others. His denials created controverted issues of fact. Accordingly, the burden remained on the Government to present sufficient reliable information to support those SOR allegations. The Government's information was not sufficient to support the allegations in SOR 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, and 1.n. These debts are resolved for Applicant. They were not listed in either of the credit reports presented at hearing. Although some of the creditors involved were referred to in one or both of Applicant's subject interviews, he denied knowledge of the debts on those occasions as well. Unlike his other denials of SOR allegations, no other information in the record connects Applicant with the debts alleged.

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; AG ¶ 2(b).

Available information sufficiently supports the remaining SOR allegations, raising a security concern about Applicant's finances, which is articulated, 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 disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant became financially overextended starting around 2003. Since then, he has had the means to pay or otherwise resolve his debts. Yet he has chosen to allow his older debts to fall off his credit report so that, in his mind, he is no longer obligated to pay them. Other debts, such as the judgment alleged at SOR 1.a, have not been addressed despite the fact that he was made aware of them almost three years ago.

In response, Applicant submitted information that requires consideration of the following AG ¶ 20 mitigating conditions:

(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; 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.

Applicant's financial problems are recent and not isolated. They continue through the presence of significant unresolved debt that arose almost ten years ago. AG ¶ 20(a) does not apply.

In support of AG ¶ 20(b), Applicant averred that his financial problems arose from unexpectedly high costs of living associated with his place of residence between 2002 and 2004, and the need to support a second wife and three stepdaughters. His decision

to marry into new family obligations was not beyond his control or unforeseen. Even if these circumstances met the requirements of AG ¶ 20(b), Applicant did not show that he has acted responsibly to address his financial problems. He has not addressed any of the debts documented here. His reliance instead on credit reporting statutes of limitations undermines confidence in Applicant's judgment. AG ¶ 20(b) does not apply.

As to AG ¶ 20(e), Applicant claims he is disputing some of his debts, or that he will investigate the accuracy of some of his debts. Applicant has known about most of those debts since June 2010, and has been aware of the Government's concerns about his debts since at least October 2012. Yet, despite being given additional time after his hearing to document his disputes, he has not met his burden in this regard. AG ¶ 20(e) does not apply. On balance, Applicant failed to mitigate the security concerns established by adverse information about his finances.

### **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a mature, responsible adult who served his country with distinction for more than 20 years in one of the Army's most dangerous warfare mission areas. He is committed to supporting a new family, and he has established an excellent performance record at work. Nonetheless, the positive information in his background is, at this time, insufficient to overcome the adverse information about his finances. Applicant's failure to respond to financial problems that are now almost ten years old undermines confidence in his judgment and reliability, and sustains doubts about his suitability for continued access to classified information. In consideration of his record of service and other positive attributes, it is hoped that he will commence more substantial efforts to resolve his debts. However, given the record as a whole, and because protection of the national interest is the primary concern in these matters, the remaining 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:	FOR APPLICANT
Subparagraphs 1.g - 1.l, 1.n:	For Applicant
Subparagraphs 1.a - 1.f, 1.g, 1.m:	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. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge