



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



In the matter of: )  
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 [NAME REDACTED] ) ISCR Case No. 12-00030  
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 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

12/19/2012

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his personal conduct because his false answers to questions about his finances were not intentional. He also mitigated security concerns about his finances because his debts arose through circumstances beyond his control, and he acted responsibly to resolve his financial obligations. Request for a security clearance is granted.

**Statement of the Case**

On September 22, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required as part of his employment with a defense contractor. Adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent to Applicant interrogatories to clarify or augment information in the background investigation initiated subsequent to Applicant's eQIP.<sup>1</sup> After

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

reviewing Applicant's responses to the interrogatories, along with the results of his background investigation, DOHA adjudicators were unable to find that it would be clearly consistent with the national interest to grant Applicant's request for a security clearance.<sup>2</sup> On May 21, 2012, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the adjudicative guidelines (AG)<sup>3</sup> for personal conduct (Guideline E) and financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on October 12, 2012, and I convened a hearing on November 15, 2012. The Government presented four exhibits (Gx.), which were admitted without objection as Gx. 1 - 4. Applicant testified on his own behalf, but offered no documentary information at the hearing. I left the record open to receive additional relevant information from the Applicant. DOHA received a transcript (Tr.) of the hearing on November 26, 2012. On December 7, 2012, Department Counsel waived objection to Applicant's post-hearing submissions, which were admitted as Ax. A - O. On December 12, 2012, Department Counsel waived objection to another post-hearing submission, which was admitted as Ax. P. Department Counsel's memoranda forwarding Ax. A - O and Ax. P are included in the record as Hearing Exhibits (Hx.) I and II, respectively.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed approximately \$42,245 for six delinquent accounts (SOR 1.a - 1.f). Under Guideline E, the Government alleged that he intentionally made false official statements by answering "no" to eQIP question 26 (*Financial Record: Delinquency Involving Enforcement*), thereby omitting the judgment debt also alleged at SOR 1.a (SOR 2.a); and to eQIP question 26 (*Financial Record: Delinquency Involving Routine Accounts*), thereby omitting the debts also alleged at SOR 1.b through 1.f (SOR 2.b).

Applicant admitted, with explanation, the allegations at SOR 1.a - 1.f, and denied SOR 2.a and 2.b, also with explanation. (Answer; Tr. 11 - 17) His admissions are incorporated in my findings of fact. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is 54 years old and requires a security clearance for his position as an employee of a defense contractor, for whom he has worked since September 2011. After graduating from high school and attending vocational training for about a year and a half, Applicant served in the United States Air Force from August 1980 until January 1988. He held a security clearance without incident during his military career and received an honorable discharge. After his discharge and a brief period of unemployment, Applicant worked as a contractor supporting a different federal agency, continuing to hold a security clearance until he was laid off in November 1997.

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<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).

Thereafter, he worked for a national home improvement store until he was again laid off in 2010. Following a few months of unemployment, he found work at a national grocery chain until he was hired by his current employer. Applicant enjoys a good reputation at work and in the community. At work, he is valued for his technical expertise, and for his willingness to contribute to the customer's mission as may be needed in areas outside his regularly assigned duties. In his church, he is known as a modest person with high integrity. (Gx. 1; Gx. 3; Ax. L; Ax. M; Tr. 6 - 10, 33 - 34, 40 - 43, 62 - 64)

Applicant has been married twice. His first marriage began in August 1981 and ended by divorce in August 1994. He married his current wife in August 1998, but he and his wife separated in October 2012, and a divorce is pending. Applicant anticipates an uncontested divorce, and, aside from legal fees, that he will not incur any ongoing financial obligations from the divorce. (Gx. 1; Tr. 35)

In his eQIP, Applicant disclosed that his pay was garnished to satisfy a delinquent credit card account for which he owed about \$12,000. This debt is alleged at SOR 1.a, and is duplicated at SOR 1.d. A credit report obtained during his background investigation showed that, in 2008, his pay was garnished to satisfy a \$2,194 delinquency owed to the same creditor as alleged at SOR 1.a and 1.d. However, contrary to Applicant's initial claims that the debt at SOR 1.a was satisfied through garnishment, available information shows this debt is still outstanding. The law firm retained to collect this debt tried to have his pay garnished, but Applicant successfully challenged that action in court in 2011. Since then, he has negotiated a repayment plan that requires him to pay \$500 monthly starting in January 2013. However, this will only become effective after he has made payments of \$75 in November and December 2012, and a \$2,850 payment in January 2013. Applicant presented information after the hearing showing that he had arranged for these payments to be taken from his bank account. (Answer; Gx. 1; Gx. 2; Gx. 3; Ax. E; Ax. N; Ax. O; Tr. 43 - 48)

Applicant also incurred a delinquent medical bill, alleged at SOR 1.b, that was referred for collection. This account arose in November 2010 when Applicant had an MRI. Applicant entered into a payment agreement with the collection agency and the debt has been paid off. (Answer; Gx. 2; Gx. 3; Ax. B; Ax. G; Ax. H; Ax. J; Tr. 52)

Applicant also owes two other delinquent debts to the creditor alleged in SOR 1.a. As alleged in SOR 1.c, he owes \$5,213 for a delinquent credit card account referred for collection in November 2011. As alleged at SOR 1.e, he owes \$6,376 for a delinquent credit card account also referred for collection. As to the SOR 1.c debt, Applicant averred he had been unable to make payment arrangements because the collection agency to which it was referred is no longer in business. However, he provided information after the hearing that shows he has made arrangements with the original creditor to make payments on a lesser amount. Regarding the debt at SOR 1.e, Applicant has been making regular monthly payments to a collection agency since October 2011. (Answer; Gx. 2; Gx. 3; Ax. B; Ax. F; Ax. I; Tr. 52 - 53, 56)

Finally, Applicant owes \$6,500 for a delinquent credit card account being collected by the same defunct company as the debt at SOR 1.c. Applicant has been

paying \$50 each month to a new collection agency since April 2012. (Answer; Gx. 3; Ax. K)

Applicant and his wife have been renting the home they live in, and they own another home which they have been renting out. They bought that house in 2005 using an adjustable rate mortgage (ARM). When the ARM rate increased in 2007, their monthly mortgage payment nearly doubled. The increased mortgage payments made it hard for him to meet his regular expenses. The house also lost about half its value between 2007 and 2011, which meant he could not sell the property. Applicant was already struggling with his finances after his 1997 lay-off and having to work for reduced salaries until 2011. (Gx. 3; Tr. 31- 32, 57 - 60)

Applicant has a budget that shows he has sufficient income, including revenue from his rental property, to meet his monthly expenses. Applicant's wife is paying rent on their marital residence, and Applicant pays rent to a friend in whose house he is now living. The rental income from the house he and his wife own covers that mortgage. Applicant has about \$1,600 remaining each month after expenses. (Ax. C; Ax. D; Tr. 32, 38 - 40)

When Applicant submitted his eQIP, he disclosed adverse information in areas not at issue in this hearing. Contrary to the SOR 2.a allegation, he also disclosed the judgment debt referred to in SOR 1.a. As to why he did not also disclose the other delinquent debts in his background, Applicant denied intentionally omitting that information. He explained that he completed the questionnaire at home on his personal computer and had difficulty with the eQIP computer program. He also averred that he did not know how to answer the financial questions because he did not have the details of his past-due debts at hand when he completed the form. (Answer; Gx. 1; Gx. 3; Tr. 32 - 33) I found his overall testimony credible, and his claims regarding SOR 2.a and 2.b to be plausible.

## **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 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

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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.

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>

## Analysis

### Financial Considerations

Department Counsel presented sufficient information to show Applicant accrued \$42,875 in delinquent or past-due debt for six credit accounts. Applicant also admitted the SOR allegations under this guideline. 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, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19 (c) (*a*

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

<sup>7</sup> See *Egan*; AG ¶ 2(b).

*history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows an inability, not an unwillingness, to pay his debts.

Of the mitigating conditions listed at AG ¶ 20, the following are potentially applicable here:

(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;

(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.

The circumstances that gave rise to Applicant's debt were beyond his control and no longer exist. Information contained in the credit reports produced by both parties show that Applicant has had other past-due debts that were not alleged because he acted to correct those delinquencies before or during his background investigation. All of the available information bearing on Applicant's finances over the past 15 years shows that his lay-off in 1997 adversely affected his finances, but that the increase in his mortgage interest rate in 2007 and subsequent decline in the value of that property exacerbated his problems, hindered his ability to pay his bills, and caused him to use too much personal credit.

By contrast, he now has a better paying job in his area of expertise. His healthy monthly cash flow reduces the concern that he might resort to illegal or other inappropriate means to generate funds. The mortgage on his house is being covered by rental income, and Applicant has been acting responsibly to resolve his past-due obligations since before the SOR was issued. Further, the total debt alleged is reduced by \$11,962, the amount in SOR 1.d, which is a duplicate of SOR 1.a. Applicant paid off the debt at SOR 1.b, and he is paying off the remaining debts through agreements with those creditors. For these reasons, I conclude the mitigating conditions at AG ¶¶ 20(a) - (e) apply, and that Applicant has mitigated the security concerns raised by the Government's information.

## **Personal Conduct**

It was alleged in SOR 2.a that Applicant deliberately made false official statements by omitting from his eQIP information about the debt alleged at SOR 1.a. However, a review of his eQIP (Gx. 1) shows that he disclosed that debt. As to his omission from his eQIP of the past-due debts alleged in SOR 1.b through 1.f, a review of his eQIP shows that they were not listed as required. Applicant denied intentionally omitting this information. The security concern at issue here is expressed 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.

To be disqualifying, Applicant must have acted intentionally to hide his financial problems. More specifically, available information must support application of the disqualifying condition at AG ¶ 16(a):

(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.

However, I conclude that he did not intend to mislead the Government about his finances. He disclosed the largest of the debts alleged in the SOR, as well as other adverse information in his background that is not at issue in this case. His testimony about his intent regarding SOR 2.b was consistent with the explanation of his omissions he provided to an investigator during his subject interview, and I found his claims credible. All available information probative of his intent regarding his eQIP answers does not support application of AG ¶ 16(a).

## **Whole-Person Concept**

I have assessed the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, 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). Applicant is a mature, responsible employee of a defense contractor. He previously held a security clearance during his honorable military service and while employed as a contract employee in support of another agency until 1997. He enjoys a good reputation at work and in the community. Despite unforeseen events that directly affected his finances, he continued working for less money in jobs outside his field of expertise, for much of the past 15 years. He has acted responsibly to resolve his past-due debts. His current finances are improving, he exhibited good judgment in response to his financial problems, and he has incurred no new delinquent debts. Allegations that

he was not candid about his finances when he applied for his clearance were not established. A fair and commonsense assessment of available information shows that Applicant has mitigated the security concerns established by the Government's information and that those concerns are not likely to recur.

### **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.a - 1.f: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a - 2.b: For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Request for security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge