



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-01251

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

12/12/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his delinquent or past-due debts. His request for access to classified information is denied.

**Statement of the Case**

On July 5, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew his eligibility for access to classified information. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

On September 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns about financial considerations (Guideline F).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM),<sup>3</sup> dated November 18, 2015, in support of the SOR.

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

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

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

Applicant received the FORM on February 23, 2016, but did not submit any additional information within the 30 days allotted for a response to the FORM. The record closed on April 8, 2016, and the case was assigned to me on September 13, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged Applicant owes \$18,516 for five delinquent or past-due debts (SOR 1.a - 1.e). Applicant denied SOR 1.d, the largest of the debts alleged, but admitted the remaining allegations. All of the debts alleged are documented in the credit reports produced by the Government. (FORM, Items 1, 2, 5 and 6)

Applicant is 30 years old. Since February 2012, he has worked at a Navy shipyard as a defense contractor employee. He was unemployed for five months before being hired for his current job. When he submitted his EQIP, Applicant disclosed several delinquent debts, including those alleged at SOR 1.d and 1.e. SOR 1.d is for the remainder due on a car loan for a vehicle that was repossessed in 2009. Applicant listed this debt as resolved because he had not heard from the lender since 2010. SOR 1.e is for money owed to a furniture rental company with whom he and a former roommate had an account. The account became delinquent in 2008 and is being enforced through a civil judgment against Applicant. As of February 2015, Applicant's pay was being garnished by the creditor to satisfy the judgment. The debts at SOR 1.a - 1.c are unpaid medical accounts that have been referred for collection. (FORM, Items 3 - 6)

Applicant was interviewed by a Government investigator in August 2012. Among the topics discussed were his debts and his plans to resolve them. In response to the SOR and the FORM, Applicant did not provide any information that shows he has paid or otherwise acted to resolve his debts in the four years since his interview. He also has not provided any information about his current finances. (FORM, Items 2 and 4)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</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

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<sup>4</sup> Directive. 6.3.

clearly consistent with the national interest<sup>5</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>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</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>8</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 compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## **Analysis**

### **Financial Considerations**

Available information supports the SOR allegations. The resulting security concern about the facts established by the Government is expressed at AG ¶ 18:

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. 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.

More specifically, the ongoing presence of multiple, unsatisfied debts 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.

Under AG ¶ 20, the following mitigating conditions are pertinent to the facts and circumstances of this case:

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

<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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.

Applicant's debts are multiple and recent. They have not been paid or otherwise resolved despite being the subject of his investigative interview four years ago. It was incumbent upon Applicant to present information that might support these mitigating conditions. He did not do so and has failed to mitigate the security concerns raised by the Government's information.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant did not meet his burden of persuasion in response to the adverse information about his unresolved debts. Doubts about his suitability for access to classified information remain. Because protection of the national interest is the principal focus of 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.e:           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 security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge