



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



In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-04520
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Douglas Velvel, Esq., Department Counsel  
For Applicant: *Pro Se*

07/22/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant accrued significant past-due and delinquent debt due, in part, to circumstances beyond his control. However, he did not act responsibly in addressing his financial problems. Applicant also failed to file his federal and state income tax returns for the 2014 and 2015 tax years. His attempts to mitigate the security concerns caused by his financial problems are not sufficient. His request for a security clearance is denied.

**Statement of the Case**

On March 13, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine that it is clearly consistent with the national interest for Applicant to continue to hold a security clearance.<sup>1</sup>

On December 16, 2015, DOD issued an SOR alleging facts which raise security concerns addressed under 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 March 24, 2016, and I convened a hearing on April 26, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 3.<sup>3</sup> Applicant testified and presented Applicant's Exhibits (Ax.) A - F. All exhibits were admitted without objection. A transcript of the hearing (Tr.) was received on May 4, 2016. The record closed on May 7, 2016, when I received Applicant's post-hearing submission. It has been admitted without objection as Ax. G.<sup>4</sup>

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant had two delinquent mortgages, one of which (SOR 1.a) went to foreclosure, and one of which (SOR 1.b) was charged off. The SOR also contained allegations that Applicant owes \$27,430 for five delinquent or past-due debts (SOR 1.c - 1.g). Applicant denied SOR 1.d, but admitted the remaining allegations. He also provided explanatory remarks with each response.

At the hearing, I granted Department Counsel's motion to amend the SOR to conform to the record.<sup>5</sup> Specifically, the following allegation was added as SOR 1.h:

You failed to file your federal income taxes for tax years 2014 and 2015, as required.

Applicant responded at hearing by admitting this allegation. (Tr. 70 - 75) In addition to the facts established by these exhibits and by Applicant's admissions, I make the following findings of fact.

Applicant is 53 years old. He works as a software engineer for a defense contractor in a position that requires he be eligible for access to classified information. He has held a security clearance for most of the past 30 years. (Gx. 1; Tr. 8 - 9)

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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).

<sup>3</sup> Department Counsel's list of exhibits is included for administrative purposes as Hearing Exhibit (Hx.) 1.

<sup>4</sup> Department Counsel's email waiving objection to Ax. G is included as Hx. 2.

<sup>5</sup> Authorized by Directive Section E3.1.17.

Before being hired for his current position in March 2015, Applicant was unemployed for about 13 months after he was laid off from his previous employer in January 2014. He was hired by company in September 2012. Before that, he was unemployed for about 19 months. He had been laid off from a large defense contractor where he had worked from January 2003 until February 2011. (Gx. 1)

Applicant has been married twice. His first marriage began in December 1985 and ended in divorce in June 1991. He and his first wife had no children. Applicant remarried in October 1991 but was divorced in December 2006 after a four-year separation. Applicant has one adult child from his second marriage. He paid child support from May 2006 until the child turned 18 in 2012, and thereafter until 2014 to satisfy an arrearage. The \$5,810 child support debt alleged at SOR 1.d arose after Applicant was laid off in 2011. Applicant's child support payments were always taken as a direct allotment from his pay. Also contributing to his child support arrearage was a mis-communication between the state child support agency and Applicant's employer's payroll department when he found work in 2012. Applicant presented information at the hearing that shows all of his child support obligations, including missed payments from over four years ago, were satisfied in early 2014. SOR 1.d is resolved for Applicant. (Answer; Ax. C - F; Tr. 22 - 23, 28, 59 - 64)

From 2003 until 2011, Applicant earned in excess of \$100,000 annually. He used credit cards, but paid them as they came due. In October 2006, he bought a house for about \$280,000. The debts alleged at SOR 1.a and 1.b represent the two mortgages, for 80 percent and 20 percent of the cost, respectively, he used to finance the purchase. After he lost his job in 2011, Applicant struggled to keep up with the mortgage payments. He used savings in his 401k account and used credit cards for more expenses than usual. He could not sell the house to cover his mortgages as it had lost value during the collapse of the housing market. (Answer; Tr. 29 - 30, 43 - 44, 57 - 58)

After Applicant found work in September 2012, he was able to stay current on his mortgage and credit cards. But he again found himself unemployed in January 2014. By late summer of that year he had fallen at least three months behind on his mortgages and he could not keep up with his credit cards. His mortgages were foreclosed in the fall of 2014, and he had to leave the property in January 2015. (Tr. 30 - 36, 38 - 39, 56 - 58)

Applicant does not know of any efforts by his mortgage lenders to collect any deficiencies after the house was sold at auction. He did not present any information regarding efforts to negotiate with his mortgage lenders as he struggled to make his payments. When he left that house he moved to another state and was supported for a time by his parents. He is still in that state and has again become self-supportive. (Gx. 1; Tr. 58)

The debts alleged at SOR 1.c and 1.e - 1.g are for delinquent credit card accounts. Although he estimates the actual balances due for SOR 1.f and 1.g to be about half of what is reported, Applicant has not made a payment on SOR 1.f since July 2014, or on SOR 1.g since December 2011. The credit card debts alleged at SOR 1.c

and 1.e were held by the same creditor. Those accounts were forgiven and reported as taxable income in 2013. Applicant did not contact that creditor before 2013 to resolve his debts with them. He also has not contacted either of the SOR 1.f and 1.g creditors to resolve those debts. (Answer; Ax. A and B; Tr. 39 - 44, 54)

At the time of this hearing, Applicant had not filed his federal income tax returns for 2014 or 2015. He did not request filing deadline extensions for either year, and he was unable to articulate a sufficient explanation for failing to file. Applicant also acknowledged that he had also not filed his tax returns on time during the last few years of his second marriage. Applicant filed his 2014 and 2015 returns nine days after his hearing. (Ax. G; Tr. 52 - 53, 69 - 75)

Applicant's current finances are sound, in that he is able to pay his rent and all other regular monthly obligations on time. He uses an automated budget software to manage his finances, and he has saved about \$6,000 in his 401k account. Applicant has about \$750 remaining each month after expenses, and he has not incurred any new unpaid debts. (Tr. 46 - 52)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</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 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.

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<sup>6</sup> See Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</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>8</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>9</sup>

## Analysis

### Financial Considerations

Available information is sufficient to support the SOR allegations under this guideline. The facts established reasonably raise a security concern about Applicant's finances that is 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, this record requires application of the disqualifying condition at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*).

The following AG ¶ 20 mitigating conditions are potentially applicable to these facts and circumstances:

(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

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<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

<sup>9</sup> See *Egan*; AG ¶ 2(b).

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.

Of these mitigating conditions, only AG ¶ 20(b) is supported by the record. But its application is only partial. Applicant's financial problems arose from two lengthy periods of unemployment, two divorces, and a failed housing market. Nonetheless, available information does not show that he took any action to try to resolve his debts. By this record, he did not try to negotiate with his mortgage lenders. He also took no action to pay or otherwise resolve his credit card debts. It is true that two of his credit card debts were forgiven, but that simply means the creditor made a business decision to resolve delinquent accounts receivable. As to his child support debt, Applicant is credited with having satisfied his obligations; but those payments were taken from his pay each month. When he wasn't working, there was no indication he tried to negotiate a satisfactory resolution.

Finally, it was determined that Applicant has, at times, neglected his income tax reporting obligations. He did not request extensions for the past two tax filing deadlines, and he did not show that there was an acceptable reason for his failure to file. The fact that he filed after his hearing does not address the security concerns raised by these facts. Applicant's financial problems are recent, there is no indication that he has sought professional assistance for his financial problems, and he has displayed a recurring willingness to neglect his income tax obligations. On balance, Applicant has failed to mitigate the security concerns raised by the Government's information.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has held a security clearance for most of his adult life. He is presumed to have been aware of the need to attend to his finances and to be proactive in response to financial problems. His failure to address his credit card debts despite once again having the means to do so, or to timely file his tax returns are factors that sustain the doubts about his suitability for clearance that have been raised by the Government. Because protection of the national interest is the principal focus in these adjudications, any unresolved 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
Subparagraph 1.d:	For Applicant
Subparagraphs 1.a - 1.c, 1.e - 1.h:	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