



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-08044

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Raymond W. Fraley, Jr. Esq.

04/06/2017

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems arose from circumstances beyond his control and he has acted responsibly in addressing them. Applicant's request for a security clearance is granted.

**Statement of the Case**

On August 4, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew 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 have a security clearance.<sup>1</sup>

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

On April 20, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that 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.

I received this case on September 26, 2016, and convened the requested hearing on November 17, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 3.<sup>3</sup> Applicant testified in his own behalf and submitted Applicant's Exhibits (Ax.) A - F. All exhibits were admitted without objection. DOHA received a transcript of the hearing (Tr.) on November 28, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$23,539 for two delinquent or past-due debts (SOR 1.a and 1.b). In response to the SOR, Applicant admitted both allegations, and he provided remarks and explanations along with his responses. In addition to the facts established by the pleadings, I make the following additional findings of fact.

Applicant is 45 years old. He has worked for his current employer since January 2005 and has an excellent record of performance there. He served in the United States Navy as an electronics technician from August 1989 until August 1993, and from May 1996 until May 2000. He received honorable discharges after both enlistments. Applicant has held an industrial security clearance since February 2006. (Gx. 1; Tr. 24, 41 - 42)

Applicant and his wife have been married since August 2013. A previous marriage began in May 2003, but ended in divorce in June 2011 after a separation that began in October 2010. Applicant and his ex-wife share custody of their 11-year-old child from that marriage. Applicant lives with his current wife and her four children (ages 12 – 18) from a previous marriage. (Answer; Gx. 1; Ax. A; Ax. F; Tr. 22 - 23)

In 2003, Applicant and his first wife bought a house for about \$88,000. Working with a real estate agent, they put the house on the market for sale in 2009. As it turned out, one of the terms of their divorce in 2011 was that they sell the house and split the proceeds. However, the value of the house had dropped by then. A tree fell on the house in April 2011 and severely damaged it, delaying any possible sale of the house until repairs were complete in October 2011. In May 2012, Applicant and his real estate agent decided to rent the house to a couple who eventually wanted to buy the property. Applicant was able to cover his mortgage until October 2013. At that time, the renters

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<sup>2</sup> The Department of Defense implemented the adjudicative guidelines 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> A copy of Department Counsel's letter forwarding Gx. 1- 3 to Applicant in advance of hearing is included as Hearing Exhibit (Hx.) 1.

broke the lease and abandoned the home without further payments. (Answer; Gx. 1; Gx. 2; Tr. 32, 34, 42)

In August 2013, after Applicant remarried, he, his new wife, and her four children rented a home. He was able to meet all of his financial obligations as long as his other house had renters. Applicant's wife had been receiving public assistance for food when she was a single mother. She lost that assistance when she married Applicant, thereby adding about \$800 to Applicant's monthly expenses. In addition, car repairs and other unforeseen expenses in 2013 strained Applicant's finances. When the renters abandoned Applicant's house, he quickly fell behind on his mortgage payments. He and his real estate agent then tried to negotiate a short sale of the house. Applicant averred that three such sales were agreed to, but owing to the length of time the lender took to approve any such sale, each buyer eventually withdrew. (Answer; Gx. 2; Tr. 25 – 27, 31 – 35)

Applicant last made a mortgage payment in October 2013. The resulting debt, \$13,203 past due on a balance of \$69,544, is alleged at SOR 1.b. The mortgage lender subsequently foreclosed and, in January 2016, sold the house at auction for \$55,282. The balance remaining on the mortgage before foreclosure was about \$69,500. As of the hearing, Applicant had not received any claim for the remaining deficiency after resale. He also had not received an IRS Form 1099 indicating that the deficiency might be attributed to Applicant as reportable income. Applicant recently consulted with a financial professional who advised that, based on Applicant's current income and expenses, he would not be required to satisfy the deficiency either directly or as reported income for tax purposes.<sup>4</sup> On October 5, 2016, the lender indicated "there is no principal balance that is associated with this account and nothing for us to collect on." (Answer; Gx. 1 - 3; Ax. D; Tr. 34, 41 – 43)

In August 2007, Applicant and his ex-wife also opened a \$27,000 line of credit to make repairs and improvements to their house. They also used the money to pay off a car loan and other bills. Applicant defaulted on the loan in June 2015 after paying it down to the \$10,336 delinquency alleged at SOR 1.a. In September 2016, Applicant was able, after repaying other debts not alleged in the SOR, to enter into a repayment agreement with this creditor whereby he pays \$200 each month for 36 months to settle the debt. (Answer; Gx. 1 – 3; Ax. E; Tr. 27 – 29, 36)

Applicant has no other delinquent or past-due debts. In addition to disclosing the SOR 1.a and 1.b debts in his e-QIP, Applicant also disclosed other bad debts that he had already paid off. He presented a budget showing that he has a modest net monthly remainder after expenses. His expenses include regular payments to the SOR 1.a debt, support for the child from his first marriage, and other regular obligations. Applicant and his wife live well within their means, relying almost exclusively on Applicant's income. Applicant and his wife would like to purchase a house, but he understands that he must finish resolving his past-due debts and save for a down payment before that can happen. (Ax.B; Tr. 29, 38 - 40)

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<sup>4</sup> The state where the foreclosure occurred allows lenders to sue for post-foreclosure deficiencies.

Applicant has an excellent reputation in his community and at work. He is active in his church and volunteers in a various capacities. His work evaluations reflect consistently superior performance and regular pay increases over the past ten years. (Ax. A; Ax. F)

## **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 (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.

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. 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>7</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

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

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

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

“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>8</sup>

## Analysis

### Financial Considerations

The Government presented sufficient information to support the SOR allegations under this guideline. The facts thus 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. 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 record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). Applicant lost his house to foreclosure after he stopped paying his mortgage in late 2013. He also defaulted on a line of credit in June 2015. At the time the SOR was issued, the debts at SOR 1.a and 1.b were still being reported as delinquent.

I have also considered the following pertinent 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
- (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.

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<sup>8</sup> See *Egan*; AG ¶ 2(b).

Applicant established that he incurred the SOR 1.a and 1.b debts through circumstances beyond his control. As to the SOR 1.a debt, Applicant had been repaying that loan as required for several years before defaulting in 2015. He has established a payment plan that will resolve the debt in the reasonably near future. After putting his house on the market without success in 2009, the terms of his divorce precluded him from retaining the house after the marriage ended. Yet the real estate market declined and Applicant was not able to sell the house. He finally became unable to pay the mortgage after he remarried and the tenants renting his house abandoned the lease. Subsequently, multiple attempts to resolve the mortgage through short sale failed and the lender foreclosed. Available information shows that Applicant has no remaining obligation to the mortgage lender, as alleged in SOR 1.b. The record as a whole shows that Applicant acted responsibly under the circumstances.

As to Applicant's current finances, he and his wife manage their finances in a prudent manner and are unlikely to incur new delinquencies. Applicant had already been resolving other debts not at issue here, but as explained, above, had not yet resolved the two debts alleged in the SOR. Applicant and his wife live within their means and understand the importance of resolving their debts before they embark on new acquisitions, such as a new car or a house. On balance, AG ¶¶ 20(a) – 20(c) apply and the security concerns under this guideline are mitigated. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has an excellent record in the workplace. He also is active in his community and his church. He has addressed his debts in a responsible manner over the past several years. A fair and commonsense assessment of the record evidence as a whole shows that Applicant's financial problems are not reflective of poor judgment or a lack of trustworthiness. The security concerns raised by the Government's information have been mitigated.

### **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.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. Applicant's request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge