



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



In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-08266
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

07/12/2017

---

**Decision**

---

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems arose from circumstances beyond his control. However, he did not respond in a manner that reflects well on his judgment and reliability. Applicant did not mitigate the security concerns raised by the Government's information, and his request for a security clearance is denied.

**Statement of the Case**

On September 4, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain 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>

---

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

On March 18, 2016, DOD issued a Statement of Reasons (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.

I received this case on November 7, 2016, and convened the requested hearing on January 26, 2017. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 – 5, which I admitted without objection. Applicant testified on his own behalf. A transcript of the hearing (Tr.) was received on February 3, 2017.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$165,831 for four delinquent or past-due debts (SOR 1.a - 1.d), including two federal tax debts (SOR 1.b and 1.c) and an unpaid property tax bill (SOR 1.d). The Government also alleged that in November 2012, Applicant filed a Chapter 7 bankruptcy petition discharged in February 2013. In response, Applicant admitted, with explanations, all of the SOR allegations. (Answer) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 61 years old. In 1984, he earned his doctorate in the scientific specialty in which he has worked since at least 1995. Since January 2015, he has been employed as a research scientist and professor at a state university. Since August 2012, Applicant also has worked as an independent consultant for private businesses and government entities. It is this position for which Applicant requires a security clearance. (Gx. 1; Tr. 44, 60)

Applicant was married from 1975 until December 2016, when a divorce was finalized. Applicant and his ex-wife had been separated since 2014. Applicant is not required to financially support his ex-wife, but shortly after they divorced, she became disabled. Applicant still carries her on his medical insurance. (Answer; Gx. 1; Gx. 2; Tr. 26, 52)

Applicant and his ex-wife have one adult son together. When their son started college in 2008, Applicant co-signed student loans for his tuition. Around 2010, the son stopped going to school and the loans came due. Applicant was unable to pay them and his son was unemployed. The resulting \$26,799 debt is alleged at SOR 1.a. Applicant testified that now that his divorce is complete and his son is gainfully employed, they are able and willing to resolve the debt. As of the hearing, he had yet to take any action to resolve SOR 1.a. (Gx. 1; Gx. 2; Tr. 34 – 35, 40 – 41, 54 – 55)

---

<sup>2</sup> At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the AG, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new AG.

Another result of Applicant's divorce was the delinquent property tax debt alleged at SOR 1.d for \$1,400. Applicant averred that this occurred because his ex-wife made an error in filing her taxes, and that the tax pertains to a small business they co-owned until sometime after they separated in 2014. Available information shows that this debt was for taxes due in 2012. Applicant averred at hearing that he would resolve this matter when he files his tax returns for 2016. (Answer; Gx. 2; Gx. 4; Tr. 25, 32 – 33, 50 - 51)

From April 1995 until March 2006, Applicant worked for a successful technical corporation. When another company bought Applicant's employer, he received a substantial financial severance package that allowed him a measure of financial security. In July 2006, encouraged by his technical success and financial comfort, Applicant invested in a start-up venture of a new company of which he became president. The company was a limited liability company (LLC) of moderate size and revenue. While other investors were not active in management of the company, they held stock positions superior to Applicant. When the business failed in 2008, there was no money left with which to pay overdue unemployment taxes or federal taxes. Shareholders with status superior positions avoided liability for the firm's losses and debts. By default, Applicant was left "holding the bag" for the debts listed at SOR 1.b and 1.c, which total \$137,632. Applicant estimates that he actually owes only about 25 percent of that total. While he has spoken with the IRS about possible repayment arrangements, he has not actually taken action to resolve those debts. (Answer; Gx. 2; Tr. 23 – 24, 38 – 39, 55 - 59)

As alleged in SOR 1.e, Applicant filed a Chapter 7 bankruptcy petition in November 2012. He declared about \$1.82 million in liabilities against \$590,000 assets. In addition to personal credit card debts he incurred as part of his business venture, he included in the petition the student loans addressed at SOR 1.a and the tax debts alleged at SOR 1.b and 1.c. In February 2013, he was discharged of most of the debts listed in his petition, but the SOR 1.a – 1.c debts have remained his responsibility. (Answer; Gx. 1; Gx. 2; Gx. 5; Tr. 24 – 26, 37)

Applicant's current financial condition is stable. His combined annual income from the state university and his consulting work is roughly \$124,000. This equates to about \$10,300 in monthly gross income. Assuming a deduction of 20 percent for taxes, he receives at least \$8,000 each month. He pays monthly rent of \$2,200 and a car note of \$800. Applicant estimates that all of his other monthly expenses total about \$3,000, with about \$1,000 remaining each month. (Tr. 44 – 48)

### **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

---

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

guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(d) 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>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>

---

<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).

## Analysis

### Financial Considerations

The Government presented sufficient information that reasonably raised a security concern about Applicant's finances. That concern is stated at AG ¶ 18, as follows:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*).

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; and

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

Applicant's response to the SOR and his testimony at hearing present a colorable argument that the debts alleged by the Government arose from circumstances beyond his control. SOR 1.b and 1.c are debts remaining from the failure of his business in 2011. Because of that failure, he was unable to meet his obligations to pay the student loans he co-signed with his son. As to the property tax debt at SOR 1.d, Applicant's position is that it resulted from his recent divorce, even though the debt

relates to the 2012 tax year and Applicant did not separate from his ex-wife until 2014. Nonetheless, Applicant's financial problems, in large measure, occurred under circumstances not of his own making.

To benefit from either AG ¶¶ 20(a) or 20(b), Applicant had to demonstrate that he acted responsibly under the circumstances and that his financial problems do not currently reflect adversely on his judgment and reliability. I am unable to conclude from this record that Applicant met his burden for either factor. His financial problems began about six years ago when his business failed. Although a great deal of personal debt was discharged through Chapter 7 bankruptcy in 2013, Applicant knew at that time that the debts at SOR 1.a – 1.c remained outstanding. As of his hearing in this case, he had not yet taken action to address those debts, despite the fact that Applicant has had steady income since early 2015. Additionally, he has not acted regarding the property tax bill at SOR 1.d. Applicant did not document any of his claims that he has approached the IRS about his tax debts, or to support his explanation for why only he was left with the SOR 1.b and 1.c debts when his business venture failed. On balance, he did not establish a basis for any of the AG ¶ 20 mitigating conditions and the security concerns under this guideline remain.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's failure to address his financial obligations sustains the doubts about his suitability for access to classified information raised by the Government's information. 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 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.

MATTHEW E. MALONE  
Administrative Judge