



**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. 15-08260

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

12/22/2017

**Decision**

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to overcome the security concerns raised by the Government's adverse information about Applicant's financial problems. Applicant's request for eligibility for access to classified information is granted.

**Statement of the Case**

On July 1, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as required for his job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.<sup>1</sup>

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

On June 13, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).<sup>2</sup> At the time the SOR was written, the DOD CAF applied the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new set of AGs, effective for all security clearance adjudications conducted on or after June 8, 2017. I have based my decision in this case on the June 8, 2017 AGs.<sup>3</sup>

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On October 28, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>4</sup> in support of the SOR. Applicant received the FORM on November 16, 2016, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.<sup>5</sup> Applicant timely responded to the FORM and provided extensive documentation in support of his case. I received this case on October 1, 2017.

### **Procedural Issue**

On August 25, 2015, a government investigator interviewed Applicant as part of Applicant's background investigation. The investigator compiled a summary of that interview and included it in Applicant's investigative file. Department Counsel provided an unauthenticated copy of that summary as Item 6 of the FORM. In his response to the FORM, Applicant objected to the admission of that summary based on the provisions of Directive E3.1.20. Applicant's objection is sustained, and I have not considered FORM, Item 6. That document is retained in the FORM for reference on appeal if necessary.

### **Findings of Fact**

Under Guideline F, the Government alleged in the SOR that Applicant owes \$32,293 for four delinquent or past-due debts (SOR 1.a – 1.d). Applicant denied, with explanations, all of those allegations. Nonetheless, the information he provided in response to the SOR and in response to the FORM, as well as three credit reports provided by the Government, are sufficient to establish all four allegations. (FORM, Items 1, and 3 – 5) In addition to the facts thus established, I make the following findings of fact.

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<sup>2</sup> See Directive, Enclosure 2.

<sup>3</sup> My decision in this case would have been the same under either version of the adjudicative guidelines.

<sup>4</sup> See Directive, Section E3.1.7. In the FORM, Department Counsel relies on six enclosed exhibits (Items 1 – 6).

<sup>5</sup> See Directive, Section E3.1.7.

Applicant is a 42-year-old employee of a defense contractor, for whom he has worked since July 2010. Aside from a seven-month period of unemployment starting in November 2007, Applicant has been gainfully employed since he received an honorable discharge from the Air Force in July 2007. After leaving the Air Force, Applicant continued to serve part-time in the Air National Guard until July 2010. (FORM, Item 2)

Applicant and his wife have been married since June 2003. In response to the FORM, she submitted a letter accepting some of the blame for their financial problems and explaining that her medical issues also hurt their finances. (FORM, Item 2)

In response to the FORM, Applicant established that the civil judgments enforcing the debts at SOR 1.a and 1.b were satisfied in November 2016. In his SOR response, Applicant showed that he was making payments on the mortgage-related debt at SOR 1.c. and that he was using an attorney to resolve that debt. In response to the FORM, Applicant established that he later resolved that debt through the sale of his house in November 2016. (FORM, Item 1)

Finally, Applicant established that the credit card debt at SOR 1.d was cancelled by the creditor. He provided an IRS Form 1099-C that attributed the amount of the debt to Applicant's income for the 2012 tax year. There is no indication that Applicant did not account for this income on his tax returns. (FORM, Item 1)

### **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. Decisions must also reflect consideration of the factors listed in ¶ 2(d) 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>6</sup> See Directive, 6.3.

clearly consistent with the national interest<sup>7</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>8</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>9</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. 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>10</sup>

## **Analysis**

### **Financial Considerations**

Applicant's denials established those allegations as controverted issues of fact. Accordingly, the Government was required to produce substantial reliable information to support those allegations. Information provided with Applicant's Answer, the information contained in FORM Items 3 – 5, and the information presented in response to the FORM are sufficient to establish the Guideline F allegations. The facts thus established reasonably raised the security concern expressed at AG ¶ 18:

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.

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

<sup>8</sup> See Directive, E3.1.14.

<sup>9</sup> See Directive, E3.1.15.

<sup>10</sup> See *Egan*, 484 U.S. at 528, 531.

More specifically, this information 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 whether the record supports application of any of 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.

All of the debts alleged have been paid or otherwise resolved. Applicant's information generally supports a conclusion that he has acted to resolve his debts to the best of his abilities. His information also reflects actions taken to resolve other debts not alleged in the SOR. In addition to my evaluation of the facts and application of 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(d). A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised by the Government's information are 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:                      FOR APPLICANT

Subparagraphs 1.a – 1.d:                      For Applicant

### **Conclusion**

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is granted.

MATTHEW E. MALONE  
Administrative Judge