



**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. 16-00595

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

01/03/2018

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to overcome the security concerns raised by the Government's adverse information about Applicant's financial problems and personal conduct. Applicant's request for eligibility for access to classified information is denied.

**Statement of the Case**

On February 15, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain 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>

On August 15, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).<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 17, 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 October 26, 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 the record closed on January 10, 2017.

I received this case on October 1, 2017. Owing to the passage of time since Applicant responded to the FORM, I re-opened the record on November 21, 2017 to allow the parties to update the information presented in the FORM and Applicant's response thereto.<sup>6</sup> This case was ready for decision on December 8, 2017, after I received submissions from Department Counsel and Applicant.<sup>7</sup>

### **Findings of Fact**

Under Guideline F, the Government alleged in the SOR that Applicant owes \$30,656 for seven delinquent or past-due debts (SOR 1.a – 1.g); and that he failed to file, as required, his federal income tax returns for tax years 2005 through 2010, but that he filed those returns in 2011 (SOR 1.h). Applicant admitted, with explanation, the debt alleged at SOR 1.e. He denied, with explanations, the remaining Guideline F allegations. Additionally, the Government alleged under Guideline E that Applicant

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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.

<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 five enclosed exhibits (Items 1 – 5).

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

<sup>6</sup> See Order of Administrative Judge, dated November 21, 2017, included as Hearing Exhibit (Hx.) 1.

<sup>7</sup> In response to my order, Applicant submitted a one-page statement reiterating his position that he should continue to have access to classified information. It is included without objection as Applicant's Exhibit (AX) A.

deliberately omitted the SOR 1.a – 1.g debts from his e-QIP (SOR 2.a). Applicant denied, with explanation, this allegation. (FORM, Item 1)

Applicant is a 60-year-old employee of a defense contractor, for whom he has worked since February 2015. His job site is in State A, and when he is not working there, he and his wife of nearly three years reside in State B. Applicant bought a house in State B in May 2015. Applicant previously was married between 1991 and 2005, and between 2006 and 2009. Both marriages ended in divorce. Applicant has two adult children. (FORM, Items 2 and 3)

Applicant served in the United States Navy from December 1976 until retiring as a senior chief petty officer in 1998. He held a security clearance for most of his military career. After retiring from the Navy, Applicant worked in jobs unrelated to the defense industry until he started working for his current employer. (FORM, Item 2)

Applicant did not list any adverse financial information in his e-QIP. During the ensuing background investigation, a credit report obtained in March 2015 reflected all of the debts listed in the SOR. The debts at SOR 1.a and 1.e arose after car loans he co-signed for one of his adult children went unpaid. In response to the SOR, Applicant claimed the debt at SOR 1.a was resolved in late 2014 when the creditor cancelled the debt and issued an IRS Form 1099-C. Applicant stated this was reflected “against the appropriate income tax returns.” He did not provide any documentation to support his claims in this regard. Applicant stated he is negotiating a settlement to resolve SOR 1.e, but he did not corroborate his claim with any documentation. (FORM, Items 1 and 2)

The debt at SOR 1.b is for a delinquent sanitation services account. Applicant was aware of the account but claimed it was not his responsibility. Instead, he insisted it belonged to a company for whom he worked in 2006 and 2007. He did not support his claim with any documents; however, the debt does not appear on a credit report obtained in October 2016. Applicant denied the SOR 1.d debt because he has never heard of that creditor. (FORM, Items 1, 4 and 5)

Applicant claimed he hired a lawyer in about October 2014 to resolve his debts so he could qualify for financing to buy a house. He stated that the debts at SOR 1.a, 1.c (a delinquent utility account) and SOR 1.f (a delinquent cell phone account he claims belongs to his second wife) were all resolved through the efforts of the law firm. He also claimed that the aforementioned debt at SOR 1.e is also being negotiated by the law firm. Applicant did not support his claims with any documentation. A credit report obtained in October 2016 still listed the debts at SOR 1.d – 1.f as delinquent and unresolved. (FORM, Items 2, 4, and 5)

On October 21, 2015, a government investigator interviewed Applicant as part of his background investigation. During that interview, Applicant discussed all of the debts in the SOR. He also volunteered that he had not filed his 2005 income tax returns because he was involved in an accident in 2006 that hindered his ability to meet such obligations. He also stated that he filed his 2006 – 2010 returns on time, but had to resubmit them in 2012 through an accountant after the IRS placed a lien against him for

past-due taxes totaling about \$32,000. The lien was satisfied in April 2012. (FORM, Items 1, 3 and 4)

Applicant did not list any of his delinquent debts on his e-QIP in February 2015. He explained his omissions based on his claim that, in October 2014, he had hired a law firm to negotiate with his creditors and clean up his debts because he was trying to buy a house. He bought that house in May 2015. At the time he submitted his e-QIP in February 2015, he claims he believed that, except for the debt at SOR 1.e, all had been resolved. He did not explain his reasoning for not listing his SOR 1.e debt. (FORM, Items 1 – 3)

Applicant has not obtained any financial counseling, and did not provide any information about his current finances. In response to the FORM, Applicant provided information showing he is paying off a state tax debt not alleged in the SOR. The debt arose in July 2016, when the state placed a lien against Applicant. (FORM, Item 5)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>8</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 clearly consistent with the national interest<sup>9</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

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<sup>8</sup> See Directive, 6.3.

<sup>9</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.<sup>10</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>11</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>12</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. Applicant's admission to SOR 1.e, and the information contained in FORM, Items 3 – 5, 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.

Applicant's delinquent debts date back to 2008. The most recent credit report available no longer lists SOR 1.a – 1.c. Despite Applicant's claims that, except for SOR 1.e, he resolved all of his debts through a law firm in 2014, the remaining debts are still

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<sup>10</sup> See Directive, E3.1.14.

<sup>11</sup> See Directive, E3.1.15.

<sup>12</sup> See *Egan*, 484 U.S. at 528, 531.

unresolved. This information requires application of the disqualifying condition at AG ¶¶ 19(a) (*inability to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*).

The disqualifying condition at AG ¶ 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*) does not apply. The same information that supports the allegation that Applicant did not timely file his income tax returns between 2005 and 2010, also supports that part of the allegation that he filed those returns in 2011.

I have also considered whether the record supports application of any of the following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Only the mitigating condition at AG ¶ 20(g) applies. Otherwise, Applicant did not present any information that supports any of these mitigating conditions. The Government established its case through FORM Items 1 – 5. As a result, it was incumbent on Applicant to present sufficient reliable information to refute the allegations or support application of the mitigating conditions. He did not do so. Despite making several claims in response to the SOR and the FORM, Applicant did not avail himself of his opportunity to document his efforts to resolve his debts. Accordingly, available

information is not sufficient to mitigate the security concerns established by the Government's information.

## **Personal Conduct**

The Government alleged that Applicant deliberately tried to hide adverse information about his finances when he submitted his e-QIP. Such information raises the following security concern addressed at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

More specifically, to be disqualifying, Applicant's omissions must have been made intentionally. If Applicant intended to omit his debts, the disqualifying condition at AG ¶ 16(a) would apply:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

I conclude from all available information probative of this issue that Applicant knowingly and willfully omitted his debts from his e-QIP. At that time (early 2015), Applicant was in the process of trying to resolve his debts so he could buy a house. Even though some of his debts may have been resolved at the time (something Applicant has not documented), he still was required to disclose delinquencies within

the seven years preceding the e-QIP. Failure to disclose due to mistake or inadvertent error is not disqualifying; however, Applicant's unexplained failure to disclose the unresolved SOR 1.e debt, or to give any indication of his financial problems, undermines any claim of mistake. AG ¶ 16(a) applies. I also considered the following pertinent AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

A review of the summary of Applicant's subject interview with a government investigator shows that he was confronted with the debts he omitted from his e-QIP. Had he volunteered that information as he had his income tax filing discrepancies, AG ¶ 17(a) might apply. Further, Applicant did not establish that he sought or received qualified advice regarding his e-QIP responses. Finally, Applicant's conduct in this regard is fundamentally at odds with the Government's compelling interest in having the information needed for a proper assessment of suitability for access to classified information. This is not a minor matter. On balance, Applicant's response did not mitigate the security concerns raised by the Government's information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines E and F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). I have considered Applicant's honorable service to the country. Nonetheless, Applicant's information did not resolve the doubts about his suitability for access to classified information that were raised by his financial problems and by his omission of information from his e-QIP. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

### **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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is denied.

MATTHEW E. MALONE  
Administrative Judge