



**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. 16-01373

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

11/20/2017

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not submit sufficient information to overcome the security concerns raised by his financial problems. His request for eligibility for access to classified information is denied.

**Statement of the Case**

On March 6, 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 is clearly consistent with the interests of national security for Applicant to have access to classified information.<sup>1</sup>

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<sup>1</sup> Required by Executive Order 10865, as amended, and by the Directive.

On September 30, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations). 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>2</sup>

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On November 21, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on January 10, 2017, 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>4</sup> Applicant timely responded to the FORM and the record closed on January 23, 2017. I received the case on October 1, 2017.

### **Findings of Fact**

The Government alleged in the SOR that Applicant owes \$11,443 for six delinquent or past-due debts (SOR 1.a – 1.f). Applicant denied the allegations at SOR 1.b and 1.e. He admitted the remaining allegations and averred he was paying the debts at SOR 1.c and 1.d. In response to the FORM, Applicant provided a one-page handwritten statement stating he disputes SOR 1.a and 1.b and reiterating he is paying the debts at SOR 1.c and 1.d. In support of that claim, he provided a printout record of payments to the creditor. Applicant did not disclose any of the alleged debts when he submitted his e-QIP, but the information provided in two credit reports and a summary of his interview with a DOD investigator supports all of the SOR allegations. (FORM, Items 1 – 6).

Applicant is a 60-year-old employee of a defense contractor for whom he has worked since March 2015. He served in the United States Air Force from 1978 until 1982. Applicant and his wife were married in December 1993, but separated in July 2014. Applicant has four adult children. The debts at SOR 1.b and 1.e are for past-due child support payments; however, the record is unclear regarding for whom the support was ordered. Credit reports reflect these accounts were opened in 1996 and 1999, and that they have been delinquent since 2013. (FORM, Items 3 – 5)

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<sup>2</sup> My decision in this case would have been the same under either version of the adjudicative guidelines.

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. In the FORM, Department Counsel relies on six enclosed exhibits (Items 1 – 6).

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7.

Applicant disputes some of the alleged debts but did not provide any documentation of those disputes. He also suffered a stroke during a prolonged period of unemployment. Applicant did not provide any information about the financial impacts of his medical problem or about his efforts to address his debts. Applicant did not present any information about his current finances.

## **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. Decisions must also reflect consideration of the factors listed in AG ¶ 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>6</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>7</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</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.<sup>9</sup> A person who has access to such

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

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

<sup>7</sup> Directive, E3.1.14.

<sup>8</sup> Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

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

The Government's information about Applicant's delinquent debts 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.

Available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(b) (*unwillingness to satisfy debts regardless of the ability to do so*); and 19(c) (*a history of not meeting financial obligations*). Applicant did not provide information sufficient to support application any of the mitigating conditions under AG ¶ 20. At most, his discussion of his unemployment and a stroke he suffered while out of work raises the potential applicability of AG ¶ 20(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.

However, for this mitigating condition to apply, Applicant must also establish that he acted responsibly under the circumstances. He did not do so; despite the information

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<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

regarding child support payments, this information is not sufficient to support his disputes or to show that his financial problems are being resolved and will not recur. The security concerns raised by the adverse information about Applicant's finances are not mitigated.

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). Doubts about his suitability remain because of Applicant's longstanding financial problems and the fact that he has not followed through on his stated intentions to repay his debts. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the granting of access to classified information.

### **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.f:                   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