



**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. 16-02741

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

10/23/2017

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his debts. He also deliberately omitted adverse information about his finances from his security clearance application. Applicant's request for a security clearance is denied.

**Statement of the Case**

On November 23, 2015, 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 interests of national security for Applicant to have a security clearance.<sup>1</sup>

On January 6, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines<sup>2</sup> for financial considerations (Guideline F), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on March 21, 2017, and I convened the requested hearing on June 15, 2017. The parties appeared as scheduled. Department Counsel proffered two items identified as Government Exhibits (Gx.) 1 - 4. Applicant testified but produced no documents at hearing. I held the record open after the hearing to receive additional relevant information from Applicant. He timely submitted documents identified as Applicant Exhibits (Ax.) A and B.<sup>3</sup> I admitted each party's exhibits without objection.<sup>4</sup> I received a transcript of the hearing (Tr.) on June 27, 2017.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$13,324 for 12 delinquent or past-due debts (SOR 1.a - 1.l). SOR 1.a addresses an unpaid state tax lien perfected in 2008, and SOR 1.f, 1.h, 1.i and 1.l are for unpaid medical bills. In response, Applicant admitted SOR 1.e, 1.g, 1.h and 1.k. He denied the remaining Guideline F allegations. (Answer; Tr. 11 - 12)

Under Guideline E, the Government alleged that Applicant deliberately made a false official statement to the Government when he answered "no" to questions in e-QIP Section 26 (Financial Record), thereby omitting the debts alleged at SOR 1.a – 1.l. (SOR 2.a). The Government further alleged that Applicant deliberately made a false official statement to the Government when he answered "no" to questions in e-QIP Section 22 (Police Record) by omitting two drug-related arrests in 1996 and 2003, as

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

<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 adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

<sup>3</sup> Ax. B is a link to an on-line credit management account proffered to show a record of debt payments. Unfortunately, the account link required an account name and password that Applicant did not provide. I have admitted this exhibit; however, I have assigned it minimal weight.

<sup>4</sup> A copy of Department Counsel's January 19, 2017 "discovery letter" and a Government Exhibit List also are included as Hearing Exhibits (Hx.) I and II, respectively.

addressed in the Guideline J allegations in SOR 3.a and 3.b. (SOR 2.b) Applicant denied both Guideline E allegations. (Answer)

Under Guideline J, the Government alleged that in 1996, Applicant was charged with possession of marijuana and drug paraphernalia (SOR 3.a); and in 2003, he was charged with possession of drug paraphernalia (SOR 3.b). Applicant denied both allegations. At hearing, Department Counsel moved to withdraw both Guideline J allegations, and to amend SOR 2.b to specifically identify the charges outlined in SOR 3.a and 3.b. Without objection, I granted the motion. (Answer; Tr. 13 – 15).

In addition to the facts established by Applicant's admissions to SOR 1.e, 1.g, 1.h and 1.k, I make the following findings of fact.

Applicant is 55 years old. He and his wife have been married since December 1998. Since 2001, Applicant has worked for at least eight different companies as a long haul truck driver. He has been with his current employer since 2015 and now requires a clearance to work on DOD contracts. (Gx. 1; Tr. 49)

The Government produced a credit report that documents all of the debts alleged in the SOR. The debt at SOR 1.a is for a state tax lien for the 2008 tax year. It remains unresolved. At the hearing, Applicant testified that he also owes at least \$1,000 to the IRS for taxes from 2014. He did not file his state and federal returns for 2014 until sometime in 2016. (Gx. 2; Gx. 3; Tr. 31, 33 – 37)

The medical debts at SOR 1.f, 1.h, 1.i and 1.l stem from a medical procedure while employed with insufficient medical insurance in 2014. Applicant has been aware of those delinquencies because he was receiving collection notices seeking repayment. (Gx. 2; Gx. 3; Tr. 52)

Applicant attributed his other debts to poor financial management, but claims he is now well aware of the importance of meeting his financial obligations. During testimony, Applicant claimed he has recently arranged with several creditors to begin monthly payment plans. He also claimed he has been making monthly payments on some of his debts. Applicant did not provide any documents to corroborate these claims. Any actions he has taken to resolve his debts have occurred in the six months before his hearing. (Tr. 28, 31, 37 – 38, 46 – 47, 50 – 51)

In early 2017, Applicant retained the services of a firm specializing in credit repair and negotiating with creditors. That firm has reported to Applicant that the debts at SOR 1.b, 1.d, 1.i and 1.j have been removed from his credit history. Applicant has not received any actual credit or financial counseling from that firm. Applicant pays the firm \$100 each month for their services. (Ax. A; Tr. 38 - 40)

Applicant testified he has incurred no new debts and that he has enough money to meet all of his current expenses. He sometimes provides modest financial support for

his children and grandchildren. A month before the hearing, Applicant was able to purchase outright a parcel of undeveloped land, on which to build a house, for about \$10,000. He did not explain why he did not decide to pay off some of his delinquent debts before making such a large purchase. (Tr. 40 – 45)

In 1996 and 2003, Applicant was charged with minor drug-related offenses. Both times the charges were dismissed. Applicant was required to disclose both charges in e-QIP Section 22, which places no time limit on reporting of drug or alcohol offenses. He averred that he thought he did not have to report the charges because of the passage of time and because he misunderstood the questions. (Gx. 1; Gx. 4; Tr. XX)

Applicant also did not disclose any of the past-due debts or the state tax lien alleged in the SOR. When he completed his e-QIP, he was aware of most of the debts alleged in the SOR. Although not alleged, Applicant acknowledged information in his credit history that shows he and his wife lost a home to foreclosure in 2013. He also did not disclose that information. Applicant did not provide any plausible explanations for his omissions in response to e-QIP Section 26 questions. (Answer; Gx. 2; Gx. 3; Tr. 30, 50, 52)

## **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(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.

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

A security clearance decision resolves only 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 "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's information 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*

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<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.

<sup>8</sup> See *Egan*; AG ¶ 2(b).

*financial obligations*). Available information documented the SOR allegations that Applicant owes or owed a significant level of past-due or delinquent debt. Most of that debt remains unresolved.

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, 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; and

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

AG ¶ 20(a) does not apply because Applicant's financial problems are recent and continuing. As to AG ¶ 20(b), Applicant did not establish that his debts arose from circumstances beyond his control. Even allowing for unplanned medical expenses caused by insufficient insurance coverage, Applicant did not establish that he has acted responsibly in the face of such unexpected obligations.

As to AG ¶ 20(c), Applicant has retained the services of a credit repair firm and several accounts have been removed from his credit history; however, the reasons for their removal was not provided. He did not present information that reflects actual counseling or other professional assistance to improve his personal financial management practices. Further, he did not clearly establish that his financial problems are under control. AG ¶ 20(c) does not apply.

Finally, AG ¶ 20(d) does not apply. Although Applicant may have resolved several debts through removal from his credit history, he did not do so in a timely manner indicative of responsibly meeting one's obligations. Applicant's efforts to resolve his debts started only a few months before the hearing. As to his claims of payment or establishment of payment plans, Applicant was afforded time after the hearing to document those claims. He did not do so.

Applicant has recently started to address his delinquent debts; however, he has not established a reliable record of fiscal responsibility that inspires confidence that his financial problems are under control and will not recur. On balance, Applicant has failed to mitigate the security concerns raised by the Government's information.

## **Personal Conduct**

Applicant did not disclose any of his past-due or delinquent debts when he submitted his e-QIP. He also did not disclose two drug-related arrests as required. Applicant denied any intent to mislead the Government. Applicant's explanation of his omission of drug-related arrests was likely a result of mistake. The charges (both of which were minor infractions and were dismissed) were so remote in time that it was reasonable for him to think they need not be reported.

That is not the case with the omission of his delinquent debts. Applicant was well aware of his financial problems when he completed the e-QIP. He has not provided a plausible explanation for why he did not list any of his debts. The Government established through sufficient circumstantial evidence that his omissions in e-QIP Section 26 were intentional. This information raises a security concern about Applicant's judgment, reliability, and trustworthiness expressed 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.

More specifically, available information requires application of the disqualifying condition at AG ¶ 16(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 have also considered the following AG ¶ 17 mitigating conditions that are pertinent in this case:

(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.

As to AG ¶ 17(a), Applicant did not establish that he attempted to correct his omissions in a timely manner. To be fair, however, the record does not reflect that investigators interviewed Applicant during his background investigation. Such interviews often offer applicants their first opportunity to correct or at least explain their omissions.

AG ¶ 17(b) does not apply. Applicant did not establish that his negative answers resulted from improper advice.

AG ¶ 17(c) does not apply because intentional false statements are not minor offenses. Applicant's submission of his e-QIP was his first interaction with the Government's attempt to assess his suitability for access to classified information. In addition to demonstrating his hesitation to be fully candid with the Government about adverse information in his background, Applicant's false statements potentially violate federal law (18 U.S.C. § 1001). On balance, available information is not sufficient to mitigate the security concerns under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's actions to resolve his debts are recent and not sufficient to satisfy the security concerns raised by his financial problems. Information about his omissions of adverse information from his e-QIP further sustains doubts about Applicant's judgment and trustworthiness. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against granting eligibility for a security clearance.

### **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.l:	Against Applicant

Paragraph 2, Guideline E:                   AGAINST APPLICANT

Subparagraph 2.a:                         Against Applicant

Subparagraph 2.b:                         For Applicant

**Conclusion**

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

MATTHEW E. MALONE  
Administrative Judge