



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



In the matter of:	)	
	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 17-01838
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Blazewick, Esq., Department Counsel  
For Applicant: *Pro Se*

05/18/2018

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his financial problems. His request for a security clearance is granted.

**Statement of the Case**

On March 22, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for 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>

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

On June 17, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on January 10, 2018, and convened the requested hearing on March 8, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 6. Applicant testified and proffered Applicant Exhibit (AX) A. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on March 15, 2018.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant filed Chapter 13 bankruptcy petitions in May 2016 and December 2016, each of which was voluntarily dismissed (SOR 1.a and 1.b); and that in February 2017, Applicant filed a third Chapter 13 petition that was open and active as of the date of the SOR (SOR 1.c). The SOR also alleged that Applicant owed \$111,803 for 14 delinquent or past-due debts (SOR 1.d – 1.q). In response, Applicant admitted each of these allegations. The allegations under this guideline are further supported by GX 1 – 6. In addition to the facts thus established, I make the following findings of fact.

Applicant is 59 years old. He and his wife have been married since April 1987. They have two adult children, and have lived in the same house since June 2004. Applicant served in the Army, first as an enlisted member, from 1978 until 1985. After attaining the rank of staff sergeant, Applicant became a warrant officer and served without interruption from 1985 until retiring in 2000. Applicant held security clearances while in the Army and received his first industrial clearance in 2006. His current application is for an upgrade from secret to top secret access. (GX 1)

Until late 2014, Applicant and his wife together earned almost \$200,000. His wife then became disabled and unable to work. Her income dropped to about \$24,000 annually from disability payments. In an effort to reduce expenses, Applicant voluntarily returned a new truck he had bought so that he could save the monthly payments. Eventually, however, they began to struggle meeting their financial obligations. Applicant could no longer pay his student loans as required, and they could not resolve the deficiency after remainder from the voluntary repossession of his truck. Additionally, in 2016 he made an error in his tax return for 2015 (which he timely filed), and was assessed the \$3,011 tax debt listed at SOR 1.d. This debt is being resolved through the Chapter 13 bankruptcy petition described below. (Answer; Tr. 21 – 22, 32 – 33, 36 – 38, 45)

In May 2016, Applicant and his wife retained a bankruptcy attorney to file a Chapter 13 bankruptcy so they could save their house and make some repayment of the debts they owed. The resulting wage earners repayment plan required Applicant to pay \$4,000 monthly, which left Applicant insufficient money to meet his other obligations. Applicant

and his wife directed their attorney to withdraw the petition. They also indicated that before another petition was filed, the attorney should consult with Applicant. On December 28, 2016, unbeknownst to Applicant, the attorney filed a second Chapter 13 petition. Applicant and his wife decided to find a different attorney to halt the second petition and work with them to file a petition that met their needs. (Answer; GX 4 – 5; Tr. 22 – 23)

In February 2017, their new attorney withdrew the second Chapter 13 and filed a new petition. That Chapter 13 action requires Applicant to pay about \$1,500 monthly and should be complete in late 2020. Applicant and his wife are in good standing with this Chapter 13 plan, which was approved in June 2017. (Answer; GX 3; GX 6; AX A; Tr. 23 – 26)

Applicant's Chapter 13 includes the non-student loan debts at SOR 1.d and 1.k, as well as several other unsecured loans not addressed in the SOR. A federal credit union debt alleged at SOR 1.h was for a boat Applicant purchased several years ago. That debt was resolved outside the bankruptcy through a short sale of the boat. (Answer; GX 6; Tr. 27, 34)

While in the Army, Applicant obtained two associate's degrees between 1988 and 1999. After leaving the Army in 2000, he went on to obtain a bachelor's degree and a master's degree. The debts addressed at SOR 1.e – 1.g, 1.i, 1.j, and 1.l – 1.q are for delinquent student loans he obtained to finance his tuition. Applicant was unable to consolidate his student loans and paid as much as \$780 monthly until sometime in 2016. Applicant could not include his student loans in his bankruptcy petition; however, as a function of his Chapter 13 petition, those loans are in deferment without further accrual of interest until he completes his current Chapter 13 repayment plan. He intends to resume payments on his student loans at that time. (Answer; GX 1; GX 3; Tr. 27 – 29)

Applicant's testimony and an examination of his income and expense declarations in his February 2017 Chapter 13 petition indicate his current finances are sound. In addition to the required Chapter 13 payments, he and his wife meet all of their expenses, living frugally and within their means. They have not incurred any new unpaid debts, and they have improved their retirement savings after initially having to take loans from their 401k accounts to make ends meet after Applicant's wife became unable to work. (Answer; GX 2; GX 3; GX 6; Tr. 38 – 43)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>2</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:

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<sup>2</sup> See Directive. 6.3.

(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>3</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>4</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>5</sup>

## **Analysis**

### **Financial Considerations**

The Government's information about Applicant's financial problems reasonably raises the security concern articulated 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

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<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; AG ¶ 2(b).

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 accrued numerous debts after his wife lost most of her income due to disability in late 2014 or early 2015. His inability to pay those debts led him and his wife to seek Chapter 13 bankruptcy protection in May 2016. After difficulties with their first bankruptcy attorney that resulted in the voluntary dismissal of two Chapter 13 petitions in December 2016 and February 2017, they are now making payments on their declared debts through a Chapter 13 wage earner plan approved in June 2017. Applicant's circumstances do not permit his student loans to be discharged through bankruptcy. He was making payments on those debts until sometime in 2016, when he could no longer afford to do so and still meet his mortgage payments. The student loans are in deferment and Applicant avers he will resume payments after completing his Chapter 13 payments in late 2020. The foregoing requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

I also have considered the following pertinent mitigating conditions under AG ¶ 20:

- (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 financial problems arose through unforeseen circumstances when his wife became disabled. Her income at the time was just more than half their total income. Applicant took what steps he could – voluntary repossession of a vehicle to save the monthly payment, as well as multiple loans from his retirement account – to reduce

expenses and meet the financial obligations he had at the time his wife stopped working. He continued to pay his student loans until around the time he filed his first Chapter 13 petition.

Applicant resorted to bankruptcy protection only when it became apparent he could not pay his debts without losing his home. Bankruptcy, although not a preferred method of resolving unpaid debts, is a reasonable means of satisfying one's debts under the right circumstances. In this case, Applicant's decision to file for bankruptcy protection was a reasonable step under the circumstances. The failure of his first two petitions was due to unforeseen difficulties in communicating with their first attorney. It does not make sense that he would agree to the terms of the first wage earner plan that required him to pay most of his take home pay for several years. Further, Applicant credibly asserted that he and his wife insisted that their first lawyer consult with them about the possibility of filing another petition and that he not do so without their permission. At the end of December 2016, Applicant later learned that a second petition was filed without his knowledge and without the expected consultation with his lawyer. His third wage earner plan has been in place since June 2017 and Applicant is in good standing with his payments. As to Applicant's student loans, they are in deferment as a result of his bankruptcy. The fact that Applicant's finances are currently sound supports confidence that he will resume his student loan payments when he completes his Chapter 13 repayment. All of the foregoing supports AG ¶¶ 20(a) and 20(b).

Financial problems present a two-fold inquiry. First, does the presence of unpaid debt or other unresolved financial burdens present a likelihood that Appellant would resort to illegal acts or other conduct that might compromise national interests? Here, that appears highly unlikely. Applicant has a long record of service and employment while holding a security clearance without any indication that he has ever not complied with what is required to safeguard classified information. Further, he has avoided incurring more debt while acting prudently and quickly to resolve his existing delinquencies. Second, did Applicant's financial problems arise from irresponsible decisions, poor judgment, or other factors that indicate he is unreliable or untrustworthy? Applicant's financial problems stem directly from the unforeseen circumstance of his wife's disability and loss of income. He is in the midst of resolving his debts in a way that allows he and his wife to meet all of their regular obligations, and that will position them to renew their payments on Applicant's student loans after completion of their bankruptcy petition.

On balance, I conclude Appellant's actions in response to his financial problems were prompt and responsible under the circumstances. Available information is 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 has tried to resolve his debts responsibly and as expediently as his circumstances permitted. I also have considered his long history of previously uneventful access to classified information in the military and after retirement. A fair and commonsense assessment of the record evidence as a whole shows 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.q: For Applicant

### **Conclusion**

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

MATTHEW E. MALONE  
Administrative Judge