



**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. 17-01916

**Appearances**

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

06/04/2018

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his financial problems; however, the security concerns about his criminal conduct remain unresolved. His request for a security clearance is denied.

**Statement of the Case**

On September 22, 2015, 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>

On June 21, 2017, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F) and criminal conduct (Guideline J). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on January 24, 2018, and convened the requested hearing on March 8, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 - 4. Applicant and two witnesses testified. Applicant also proffered Applicant Exhibits (AX) A. All exhibits were admitted without objection. I held the record open after the hearing to allow Applicant time to submit additional relevant information. The record closed on March 28, 2018, when I received Applicant's timely post-hearing submissions (AX B and C)<sup>2</sup> and Department Counsel's waiver of objections. I received a transcript of the hearing (Tr.) on March 15, 2018.

### **Findings of Fact**

Under Guideline F, the Government alleged that in 2016, Applicant lost his home to foreclosure (SOR 1.a); and that he owed \$17,793 for four delinquent or past-due debts (SOR 1.b – 1.e). The \$14,820 civil judgment debt at SOR 1.e constituted about 83 percent of the total alleged. In response, Applicant admitted, with remarks and supporting documents, SOR 1.a, 1.b, and 1.d. The attached documents established he had paid the debt at SOR 1.b. He denied SOR 1.c, providing documents that showed the accounts with that creditor had zero balances in 2015 and 2016. He also denied SOR 1.e, claiming the debt was not his and was the result of identity theft. (Answer)

Under Guideline J, the Government alleged that in July and November 2016, Applicant was charged with an unspecified offense that was reduced to reckless driving (SOR 2.a). It was also alleged that on April 30, 2016, he was charged with misdemeanor driving under the influence of alcohol (DUI), and misdemeanor possession of less than one ounce of marijuana, for which he was convicted of reckless driving and placed on 12 months of probation, with the drug charge conditionally suspended during that time (SOR 2.b). In response, Applicant admitted SOR 2.b, but denied SOR 2.a, averring it was a duplicate of SOR 2.b. At hearing, Department Counsel agreed and withdrew SOR 2.a. (Answer; Tr. 9 – 10)

The Government also alleged under Guideline J that on December 9, 2015, Applicant was arrested and charged with damage to a business, for which he was ordered

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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> Applicant's post-hearing submissions are identified and admitted as follows: AX B is a single-page copy of his DD FORM 214 Worksheet reflecting information about his military service and his honorable discharge therefrom. AX C consists of three pages of personal finance and budget information.

to complete 40 hours of community service and a drug and alcohol evaluation (SOR 2.c); that in September 2006, he was charged with misdemeanor possession of marijuana (SOR 2.d); and that in February 2003, he was charged with possession of marijuana, public intoxication, driving on a suspended license, and three other traffic violations (SOR 2.e). In response, Applicant admitted 2.b – 2.e, and provided documents showing he completed all terms of his sentencing for his 2015 arrest and that his court-ordered evaluation reflected no diagnosis of substance abuse and no recommendation for treatment. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 40 years old. He joined the Army in October 1998, serving as an aviation electronics technician until he was honorably discharged in October 2004. Thereafter, he found work with defense contractors supporting military avionics requirements. After recently earning an associate's degree in information technology (IT), most of his work has focused on IT aspects of contractor support of military avionics programs. Applicant currently is studying for his bachelor's degree in IT. He has held a security clearance both in the Army and in connection with his civilian work as a defense contractor. (GX 1; Tr. 6 – 7, 37, 39)

Applicant and his wife were married in October 2015, but recently separated. Applicant has three children, ages 19, 13 and 2. Applicant has custody of his 13-year-old child and shares custody of the two-year-old with his wife. (GX 1; Tr. 36 – 37)

Applicant generally has been gainfully employed since leaving the military. In December 2012, he became unemployed due to a company reduction in force. He did not find work again until August 2013. Unfortunately, that contract ended unexpectedly early and Applicant again was unemployed, this time until June 2014. In 2007, Applicant obtained a mortgage to purchase the house that is the subject of the foreclosure addressed in SOR 1.a. When he lost work in 2013 and 2014, he struggled to meet his mortgage payments because, as he acknowledged at hearing, he was already overextended financially. Applicant initially thought a short sale would be approved by the lender, but the mortgage was foreclosed and resold in September 2016. Applicant has no further obligation regarding his mortgage. (Answer; GX 1; GX 2; Tr. 40 – 41)

The debts alleged at SOR 1.b and 1.d are for an unpaid utility bill and a delinquent homeowners association (HOA) account, respectively, in connection with the house Applicant lost to foreclosure. Applicant has paid the utility bill and he sent the HOA \$100 as a deposit on a proposed repayment plan. The HOA kept Applicant's \$100 but has not responded to his attempts to resolve the debt. (Answer; GX 1 – 3; Tr. 42 – 44)

In response to the SOR, Applicant denied responsibility for the civil judgment debt alleged at SOR 1.e, claiming he has no knowledge of the debt or the original creditor involved. In support of his claim, he produced a court document that lists a defendant with a different middle initial than his, and testified that he has disputed this debt with the credit reporting services. An October 2015 credit report documented this debt, but it does not

appear on the April 2017 credit report submitted by the Government. Nor does either credit report mention the original creditor to whom the defendant allegedly owed money. (Answer; GX 2 and 3; Tr. 44 – 46, 66 – 68)

As to the debt addressed in SOR 1.c (\$257 owed to the Department of Veterans Affairs (VA)), Applicant obtained his associate's degree using tuition assistance benefits he earned through his military service. In 2015 and 2016, he dropped classes and incurred debts to the VA for the cost of those classes. Information included with his response to the SOR shows he timely addressed those debts and has had a zero balance with the VA since 2016. (Answer; GX 1 – 3; Tr. 42 – 43)

Applicant's current finances reflect stability and a positive cash flow. He files and pays his taxes on time, and he has incurred no new delinquent debts in the past two years. Applicant also has been able to save for retirement. He has only one credit card with a \$400 limit, and he adheres to a monthly budget and appears to be living modestly and within his means. (AX C; Tr. 68 – 73)

Applicant has been arrested or charged with criminal offenses at least four times in the past 16 years. SOR 2.e alleges that in February 2003, he was arrested and charged with public intoxication and marijuana possession. Applicant was still in the Army and was pulled over for reasons not apparent from this record. A civilian friend was a passenger. It is also not clear from the record why Applicant was charged with public intoxication and not an alcohol-related driving offense. During the traffic stop, police found a small amount of marijuana in the car. Both Applicant and the passenger denied it was theirs, so both were cited for possession. Applicant denies being intoxicated when he was stopped. At hearing, Applicant presented information showing he actually was arrested in December 2002 and appeared in court on January 2, 2003.<sup>3</sup> According to that information, Applicant was convicted of both the public intoxication and drug offenses. He was sentenced to 90 days incarceration (suspended) and assessed fines and court costs. Applicant was not disciplined by the Army for these offenses. Other minor traffic offenses were dismissed. (Answer; AX A; Tr. 56 – 59)

After Applicant left the Army, he worked for a defense contractor doing work with the Army in combat zones. On September 28, 2006, as alleged in SOR 2.d, Applicant was arrested and charged with DUI and with misdemeanor marijuana possession. The arrest occurred less than 24 hours after Applicant returned from an overseas work assignment. He went out drinking with some of the military personnel with whom he had worked overseas. Realizing he was too drunk to drive, he went to sleep in his parked car in a parking lot with the keys in the ignition. A police officer woke him up, and after determining Applicant was still intoxicated (Applicant also told him as much), arrested Applicant for misdemeanor DUI because the keys were in the ignition. Applicant also was

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<sup>3</sup> Nothing in the documents proffered at hearing by the Government reflects any information about this arrest that constitutes a good-faith basis for SOR 2.e. Nonetheless, that issue is made moot by Applicant's admission and proffer of AX A.

charged with marijuana possession, which he denied, opining that it belonged to one of the passengers in his car earlier that night. That charge was dismissed. As to the DUI, Applicant was convicted, lost his driving privileges for one year, attended DUI school, and had to spend one weekend in jail. (Answer; GX 1; GX 4; Tr. 53 – 56, 61 – 63)

On December 10, 2015, as alleged in SOR 2.c, Applicant was charged and convicted of damaging a business. Applicant went to a specific bar because it allowed him to smoke without going outside. At some point, the manager asked him to leave. Applicant claims he was not told why he had to leave and became frustrated when bouncers started to intervene. Applicant kicked and damaged the door on his way out of the bar. At that point the police were called and Applicant was arrested. The court ordered him to perform 40 hours of community service and to complete a drug and alcohol evaluation. Applicant established that he completed all of the terms of his sentencing and made restitution to the restaurant owner. (Answer; GX 4; Tr. 51 – 53)

In late April 2016, as alleged in SOR 2.b,<sup>4</sup> Applicant was arrested and charged with DUI and with possession of marijuana. Applicant had traveled out of town to sell his boat. Before stopping at a friend's house for the night on the way home, a police officer pulled him over after Applicant swerved in the road. Applicant claimed he had consumed only two beers with dinner before he was stopped. He denies being intoxicated and cites the lack of information regarding a field sobriety or breathalyzer test. Applicant also denied he had any marijuana with him. On February 7, 2017, he pleaded guilty, *in absentia*, to reckless driving and was placed on 12 months of probation that expired in February 2018. The marijuana possession charged was held in abeyance during his probation. Applicant paid a total of \$1,850 in fines and court costs, and the marijuana charge was dismissed when he completed his probation. (Answer; Tr. 46 – 49)

Applicant testified that he no longer drinks alcohol very often. When he does, his consumption is best characterized as social and in moderation. He works long days and spends most of his free time with his children. His supervisor and a co-worker from his current job, which he has held since August 2015, testified that Applicant is a good father, dependable, trustworthy, and candid. Neither conveyed any specific knowledge of Applicant's two arrests since joining their company. (Tr. 22 – 35, 64 – 65)

## **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

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<sup>4</sup> Again, nothing in the documents proffered at hearing by the Government reflects any information about this arrest that constitutes a good-faith basis for SOR 2.b. Nonetheless, that issue is made moot by Applicant's admission and documents provided with his SOR response.

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

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. 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.

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 established that Applicant has experienced financial difficulties since about 2013. Two periods of unexpected unemployment made it difficult for Applicant to meet his financial obligations, most notably the mortgage on his house, in large part

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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).

because he was already financially overextended. At the time of the SOR, it did not appear that he had addressed any of the debts reflected in his credit reports or declared in his e-QIP. All of the foregoing reasonably raises a security concern about Applicant's finances that is 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 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, available information requires application of the following AG ¶ 19 disqualifying conditions:

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

By contrast, Applicant acted to resolve the debts at SOR 1.b and 1.d, although the latter debt remains outstanding. The debt at SOR 1.c was resolved at or near the time it was reported in 2016, and Applicant has no ongoing obligation regarding the foreclosure addressed in SOR 1.a. In addition, all available information probative of SOR 1.e reasonably casts doubt on the validity of that civil judgment as Applicant's responsibility. Further, Applicant's current finances are sound and he appears to live frugally, paying close attention to how he manages his money. All of the foregoing supports application of 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;
- (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;

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

(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.

On balance, I conclude the record evidence as a whole shows that the security concerns about Applicant's finances are mitigated.

### **Criminal Conduct**

Available information about Applicant's multiple criminal offenses since 2002 reasonably raises a security concern that is articulated at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant has been charged at least four times over the past 16 years with criminal offenses related to alcohol and marijuana. Each such incident, the last two of which occurred after he submitted his most recent application for clearance, resulted in conviction. He completed probation for his most recent offenses about a month before his hearing in this matter. This information requires application of the following AG ¶ 31 disqualifying conditions:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I also have considered the following AG ¶ 32 mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense; and



(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) does not apply because Applicant's last instance of criminal conduct was in 2016, not long after his 2015 arrest for destruction of property. Both arrests occurred after he was hired by his current employer in August 2015. Absent information to the contrary, and despite his disagreements with the charges of marijuana possession or intoxication, the information available to the courts weighing those cases was sufficient proof of his conduct. AG ¶ 32(c) does not apply. In addition, AG ¶ 32(d) does not apply because of the recency of his criminal conduct, and in view of the long-term nature of his record of offenses. Further, Applicant only recently completed a term of probation and has yet to establish a track record of good behavior that might support a conclusion that his past misconduct will not recur. On balance, I conclude he has not mitigated the security concerns about his criminal conduct.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive testimony from Applicant's supervisor and a coworker. Nonetheless, the persuasive value of their statements is lessened by the recency of Applicant's criminal conduct and their lack of knowledge about those events. Although it appears Applicant's finances are on the mend, information that reflects positively on Applicant's judgment, that information is not sufficient to outweigh the doubts raised by his criminal conduct. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the Applicant.

### **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.e:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Withdrawn
Subparagraphs 2.b – 2.e:	Against 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