



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



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 17-03881  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

11/27/2018

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not provide sufficient information in response to the Government's case to overcome the security concerns raised by his financial problems. Applicant's request for eligibility for access to classified information is denied.

**Statement of the Case**

On July 26, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as part of his employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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>

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

On February 15, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).<sup>2</sup> Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

On May 21, 2018, 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 July 5, 2018, and he was informed he 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> The record closed on August 19, 2018, after Applicant did not respond to the FORM. I received this case for decision on November 21, 2018.

### **Findings of Fact**

Under Guideline F, the Government alleged that the mortgage on Applicant's home was foreclosed in March 2016 (SOR 1.b), and that a \$60,130 second mortgage on that home had been charged off and was still unresolved (SOR 1.a). It was also alleged that Applicant owed \$184 for a delinquent medical account that was in collection (SOR 1.c). Applicant admitted, with explanations, each of the allegations.

All of the SOR allegations are supported by Applicant's admissions to the SOR; by his responses to questions in Section 26 (Financial Record) of his e-QIP; by a summary of a personal subject interview (PSI) conducted on August 29, 2017; and by the contents of a credit report, dated August 10, 2017, obtained during his background investigation. (FORM, Items 2 – 8) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 40-year-old employee of a defense contractor, for whom he has worked since November 2015. From May 2004 until November 2015, Applicant was a self-employed businessman working in the home improvement industry. He and his wife have been married since October 2004, and they have a seven-year-old child. (FORM, Items 2 and 3)

In 2008, Applicant's business began suffering downturns in revenue as a result of the national economic recession. The recession had a disproportionately adverse effect on the housing and home improvement sectors, because at the heart of that downturn was the collapse of the national housing market. His loss of revenues resulted in lost income and difficulties in meeting his personal financial obligations. Starting sometime in 2012, Applicant started falling behind on the first and second mortgages on his house. He also lost other personal assets to repossession. (FORM, Items 2 and 4)

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<sup>2</sup> See Directive, Enclosure 2.

<sup>3</sup> See Directive, Section E3.1.7. In the FORM, Department Counsel relies on five enclosed exhibits (Items 1 – 5).

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

In March 2016, as alleged in SOR 1.b, Applicant lost his home to foreclosure. There does not appear to be any remaining obligation for the first mortgage. As alleged in SOR 1.a, Applicant still owes \$60,130 for his second mortgage. He claims he had been working with both creditors to arrange a short sale of the property, which was worth less than the remaining total balance of both mortgages; however, he claimed the second mortgage lender mishandled paperwork required for the transaction and the deal fell through. (FORM, Items 1 – 4)

Applicant responded to the SOR, but he did not produce any information to document his efforts to resolve his mortgages. In the FORM, Department Counsel cited the absence of sufficient information to support Applicant's claims as support for the Government's argument against granting eligibility for clearance in this case. Applicant did not respond to the FORM. (FORM at 3; FORM, Item 2)

### **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 ¶ 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

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

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

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. 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>9</sup>

## Analysis

### Financial Considerations

This record reasonably raises 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.

More specifically, this record requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). By contrast, none of the information presented in this record supports application of any of the pertinent AG ¶ 20 mitigating conditions. Applicant's loss of income was, arguably, beyond his control, thus requiring consideration 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

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

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

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

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

Because Applicant did not present any information showing he acted reasonably under the circumstances, AG ¶ 20(b) does not apply. Additionally, he submitted no information that would require consideration of the other AG ¶ 20 mitigating conditions. 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). My review of all of the available information leaves unanswered the doubts about Applicant's suitability for access to classified information that were raised by his financial problems. 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.c:                 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