



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-05200
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/19/2016

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his past-due or delinquent debts. His request for access to classified information is denied.

**Statement of the Case**

On January 20, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his 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 national interest for Applicant to have access to classified information.<sup>1</sup>

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

On November 18, 2014, DOD 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 and requested a decision without a hearing. On July 13, 2015, 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 August 18, 2015. He was advised he had 30 days from the date of receipt to submit additional information in response to the FORM, but he did not respond. The record closed on September 17, 2015, and the case was assigned to me on October 16, 2015.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owes \$29,626 for seven delinquent or past-due student loan accounts (SOR 1.a - 1.g). Applicant admitted all of the allegations, citing a failed business and a period of unemployment as the circumstances underlying his financial problems. (FORM, Items 1 and 2) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor, where he has worked as a welder since January 2014. He has been married since October 2006. He and his wife have a five-year-old child. Since 2006, Applicant has worked primarily as a cook in various restaurants. In April 2013, he and his wife opened their own restaurant; however, that business venture failed in October 2013, and Applicant was unemployed until he started his current job.

When Applicant submitted his EQIP, he disclosed the delinquent debt alleged at SOR 1.a. Credit reports obtained during the subsequent background investigation and adjudication in this case documented the other debts alleged in the SOR. Applicant attributes the accrual of his debts to his failed restaurant business and his subsequent unemployment. He did not provide any information showing he has taken action to pay or otherwise resolve his debts. Applicant also has not obtained any financial counseling or other professional assistance in resolving his debts. There also is no information in the file showing that Applicant has a basis to dispute any of his debts.

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</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(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

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<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included five exhibits (Items 1 - 5) proffered in support of the Government's case.

<sup>4</sup> 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>5</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>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</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>8</sup> 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**

The Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, at AG ¶ 18 as follows:

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). By contrast, the record does not support any of the mitigating conditions listed at AG ¶ 20. Applicant's debts are recent and ongoing. Although his indebtedness arose from a business failure and a period of unemployment, mitigation requires a corresponding response that reflects well on Applicant's judgment and reliability. Applicant has not obtained any financial counseling and he did not show that he has made any good-faith efforts to pay or otherwise resolve his debts. In summary, Applicant did not mitigate the security concerns raised by the Government's information. In addition to evaluating the facts and applying 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(a). Aside from a brief period of unemployment in late 2013, Applicant has been gainfully employed and is presumed to be a hard-working, responsible husband and father. Nonetheless, without other information suggesting his financial problems are being addressed, doubts remain about his suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those 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:           AGAINST APPLICANT

Subparagraphs 1.a - 1.g:           Against Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge