



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 15-01763
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel  
For Applicant: *Pro se*

05/17/2016

**Decision**

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 September 11, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew 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 national interest for Applicant to continue to receive 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 September 21, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines<sup>2</sup> for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on January 8, 2016, and I convened the requested hearing on February 9, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 5.<sup>3</sup> Applicant testified and presented Applicant's Exhibits (Ax.) A and B. I received a transcript of the hearing (Tr.) on February 19, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant owed \$31,025 for ten past-due or delinquent debts (SOR 1.a - 1.j). In response to the SOR, Applicant denied SOR 1.a - 1.c and 1.h. He admitted the remaining allegations. Applicant also provided explanatory comments with each response. In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is 36 years old and works as a mechanic and laborer for a defense contractor, a job for which he was hired by a different company in February 2001. Applicant has held a security clearance in connection with his work since 2001. He has a good reputation in the workplace and has been assigned to different work sites around the country in connection with his employer's contract with DOD. (Gx. 1; Gx. 2; Tr. 4, 38 - 40, 55 - 56)

In 2005 and 2012, Applicant lost income as a result of work slow downs. DOD customer demand for services did not require a full work week and Applicant could not earn as much as he might when 40-hour work weeks and even overtime are the norm. Applicant currently has steady work and it appears that will be the case for at least the next two years. (Answer; Gx. 2; Tr. 55 - 56)

Until recently, Applicant was not as attentive to his personal finances as he should have been. When work slowed and he lost income, he found himself overextended with debts he could not pay. The debt at SOR 1.a was for a civil judgment in favor of a landlord who evicted Applicant in 2005 for failing to pay his rent. Applicant satisfied that debt in 2012. (Answer; Gx. 3; Ax. A; Ax. B; Tr. 29 - 31)

In 2012, Applicant required surgery that, for the most part, his medical insurance covered. The debts alleged at SOR 1.d , 1.e, 1.g and 1.j are for past-due medical bills. Aside from SOR 1.j, the amounts listed represent his co-pays or other expenses not

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<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the December 2, 2015 letter that forwarded Gx. 1- 5 to Applicant, in accordance with Directive Section E3.1.13.

covered by his medical insurance. In October 2015, Applicant paid the SOR 1.d, 1.e and 1.g debts, that were held by the same collection agency. The SOR 1.j medical debt for \$693 was for treatment of his knee. After resubmitting the claim to his medical insurer, Applicant found that he owed only \$43. He paid that bill in October 2015. (Answer; Gx. 2; Ax. B; Tr. 33 - 34, 36 - 37, 47 - 48)

The debt at SOR 1.f was a collection account for a retail credit card. Applicant averred that he paid the debt in full "over 10 years ago." The debt at SOR 1.i is for a delinquent utility bill from his residence in another state until 2012. Applicant also claimed he has paid that debt, albeit, more recently. Neither debt appears on the most recent credit reports obtained by the Government. (Answer; Gx. 2 - 5; Ax. A; Tr. 34 - 36, 40 - 41)

In 2005, Applicant's car was repossessed when Applicant experienced a work slowdown and loss of income that hindered his ability to make his loan payments. The \$6,529 debt alleged at SOR 1.b is for the remainder after resale of that car. Applicant has not been contacted about repaying that debt, and he has been unsuccessful in contacting a creditor who currently holds that debt. Since losing that car, Applicant has financed the purchase of two cars. Despite having poor credit until recently, he paid off the first car without difficulty. He bought the used car he currently owns in January 2015 for \$31,000. He has not missed any payments and has paid ahead on the loan so that he now owes less than \$19,000. (Answer; Gx. 2 - 5; Tr. 41 - 45)

The two debts alleged at SOR 1.b and 1.h originated with the same creditor. Applicant denied these allegations and believes they represent only one account – a delinquent personal loan Applicant obtained in 2003. Applicant stated in his subject interview in December 2012 that he did not recognize the accounts and was disputing them with the credit reporting agencies. The debts appear in the oldest of the credit reports obtained during Applicant's background investigation but are absent from more recent reports. He has not paid or otherwise resolved these accounts. (Answer; Gx. 2 - 5; Ax. A; Tr. 31 - 32, 34 - 35, 49 - 51)

Applicant acknowledged that he did not pay close attention to his credit or personal finances until receiving the SOR. However, his current finances are sound. He pays his taxes on time, he has no new delinquencies or missed payments since 2012, and he has a substantial positive cash flow each month after expenses. (Gx. 4; Gx. 5; Ax. A; Tr. 53 - 56, 61, 67)

## **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 (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) 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>5</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>6</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>7</sup>

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<sup>4</sup> See Directive, 6.3.

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

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; AG ¶ 2(b).

## Analysis

### Financial Considerations

Available information is sufficient to support the SOR allegations under this guideline. The facts established reasonably raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

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, this record supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant incurred numerous debts during periods of reduced income and, in part, through poor management of his personal finances. The debts alleged at SOR 1.b, 1.c, and 1.h remain 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

The mitigating condition at AG ¶ 20(a) does not apply because Applicant's three largest debts are not resolved. AG ¶ 20(b) applies because much of Applicant's debt arose when he lost income due to unforeseen reductions in hours at work. He also established that he has acted to the best of his abilities to resolve his past-due debts. AG ¶¶ 20(c) and 20(d) apply because Applicant's current finances are sound, he has good monthly cash flow, he has not incurred new debts in the past three years, and his

work situation is more stable than before. Applicant has also acted to resolve his debts as they have arisen. On balance, Applicant is likely to continue to resolve his outstanding debts. Applicant has mitigated the security concerns about his finances.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a reliable worker who has acted responsibly to resolve his debts and improve the way he manages his finances. A fair and commonsense assessment of the record evidence as a whole shows that the doubts about Applicant's suitability for access to classified information are resolved.

### **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.j:	For Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge