



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



In the matter of:	)	
	)	
XXXXXX, Xxxxx Xxxxxx	)	ISCR Case No. 14-05964
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: *Pro se*

12/17/2015

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I deny Applicant's clearance.

On 26 April 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 1 October 2015, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 1 December 2015.

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<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-8.

<sup>2</sup>DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.d-1.f and 1.h. He is a 52-year-old welder sponsored for a clearance by a U.S. defense contractor since May 2013. He was previously employed as a welder at the same company from August 1982 to February 1995. He has not previously held a clearance. He was unemployed from September 2012 to March 2013.<sup>3</sup> Otherwise, he has been continuously employed, full time, since August 1982. He has been married for 31 years, and has two adult sons.

The SOR alleges, and Government exhibits (Items 4-8) substantiate, eight delinquent debts totaling nearly \$12,000. Applicant admits two delinquent debts totaling \$8,600. He also admits failing to file his state and Federal income tax returns for 2010.

Applicant's May 2013 clearance application (Item 4) reported seven delinquent debts.<sup>4</sup> Applicant reported a delinquent mortgage, not alleged in the SOR (now current). The six remaining debts he reported on his clearance application correspond to SOR debts 1.d, 1.g, and 1.h.<sup>5</sup> Applicant also reported owing about \$2,000 (SOR 1.c) for unfiled 2010 state (SOR 1.b) and Federal (SOR 1.a) income tax returns.<sup>6</sup> The remaining debts comprise two delinquent credit card accounts (SOR 1.d and 1.g), a delinquent automobile loan (SOR 1.e),<sup>7</sup> a delinquent medical bill (SOR 1.f), and a delinquent electric bill (SOR 1.h).<sup>8</sup>

Applicant dated his financial problems to 2006-2007, when his wife cut back her work schedule so she could return to school (Item 5). The delinquent credit card debt is largely for expenses related to that return to school. They were unable to keep up with

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<sup>3</sup>He apparently continues to work for this employer (which does not require a clearance) pending resolution of his clearance application and subsequent employment by the Government contractor.

<sup>4</sup>Applicant reported these debts (Item 5) using a credit report (not part of the record) obtained by his prospective employer, before the Government-obtained May 2013 credit report (Item 6).

<sup>5</sup>The three debts alleged in the SOR were listed with a duplicate of each. The duplicates are the original holders of the debts; the SOR-alleged debts are the collection agents.

<sup>6</sup>Applicant's tax issues do not appear on any of his credit reports. They appear only in his clearance application (Item 4) and his discussion of them during his June 2013 subject interview with a Government investigator (Item 5). This evidence belies his claim in his Answer that he was unaware of these issues.

<sup>7</sup>Which Applicant incorrectly attributed to a payroll check that he received that later bounced (Answer). He discussed this debt with the Government investigator in June 2013 (Item 5) and acknowledged being past due on the account, albeit in an amount lower than that alleged in the SOR.

<sup>8</sup>Applicant owns two units of a duplex, each with its own electric meter. He lives in one; the other one was occupied by his two sons, who apparently failed to pay their electric bill. Under state law, Applicant is legally obligated for the electric bill as owner of the unit. In denying this allegation, Applicant acknowledged that he was legally obligated to pay the bill, but misrepresented the circumstances of the debt by asserting that a tenant had defaulted on the payment, not more accurately reporting that it was his sons who had not paid.

the payments with her reduced hours. Applicant's unemployment further complicated their finances. The three credit reports in the record (Items 6-8) suggest that the delinquent debt alleged in SOR 1.d is much lower than it was previously, although Applicant documented no payments on the account. He claimed, without corroboration, to be paying on SOR debt 1.g. He acknowledged that his financial problems were not due to circumstances beyond his control (Item 5).

Applicant has not documented any contact with his creditors since becoming re-employed in March 2013. He has not documented what actions, if any, he has taken regarding his overall finances since that time. He has stated no plan for addressing his delinquent debts. He provided no budget or financial statement. Applicant has not received any credit counseling or debt consolidation. He provided no work or character references.

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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>9</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant failed to submit sufficient evidence to mitigate the security concerns. Applicant

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<sup>9</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

has a history of financial difficulties, which are ongoing, and seem unlikely to be resolved any time soon.<sup>10</sup> Applicant's financial problems appear to date from at least 2006-2007, when his wife returned to school. They were exacerbated by Applicant's unemployment from September 2012 to March 2013. However, Applicant has been re-employed since March 2013. There is no evidence of any efforts by Applicant to resolve the debts.

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; although the immediate causes of his problems may be unlikely to recur if he and his wife remain employed.<sup>11</sup> Applicant's two years unemployment was certainly beyond his control, but he has not demonstrated that he has been responsible in addressing his debt since he became re-employed and his wife returned to full-time work.<sup>12</sup>

Applicant submitted no evidence to show that he received credit or financial counseling, and his debts are clearly not being resolved.<sup>13</sup> There are no signs that Applicant has been in contact with any of the creditors alleged in the SOR, and thus he cannot establish that he has made a good-faith effort to address his debts.<sup>14</sup> Moreover, Applicant has mostly disregarded these financial obligations since becoming re-employed in March 2013. His documented inaction for over two years raises significant security concerns that Applicant has not begun to address. Accordingly, I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraphs a-h:

Against Applicant

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<sup>10</sup>¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>11</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>12</sup>¶20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

<sup>13</sup>¶20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

<sup>14</sup>¶20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge