



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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XXXXXXXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 15-03966  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro Se*

12/17/2018

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 11 November 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 20 July 2017 and I convened a hearing 30 August 2017. DOHA received the transcript 7 September 2017, and the record closed.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and hearing exhibit (HE) I.

<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. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

## Findings of Fact

Applicant admitted the SOR allegations. He is a 58-year-old industrial security specialist employed by a U.S. defense contractor since June 2016. He has been employed in related positions since February 1999, with periods of unemployment from January-June 2011 and January-June 2016. He has previously had favorable background investigations in June 2002 and July 2009. This is a periodic reinvestigation of that clearance (GE 1).

The SOR alleges, Government exhibits substantiate, and Applicant admits six delinquent debts totaling over \$122,000. The debts comprise a \$20,619 Internal Revenue Service (IRS) tax lien filed in May 2010,<sup>3</sup> and five delinquent education loans totaling \$101,629. Applicant obtained the education loans to pay for his children's college expenses. Applicant disclosed the fact, but not the amount, of the tax lien on his August 2014 clearance application (GE 1). He did not disclose any delinquent education loans on his clearance application, but discussed them with a Government investigator during a February 2015 interview (GE 2) based on an August 2014 credit report (GE 4). Applicant's July 2016 credit report (GE 3) reflects the education loan amounts alleged in the SOR. Applicant's January 2017 Answer contains a December 2016 loan account statement showing a \$103,546 combined principal balance.<sup>4</sup>

Applicant attributed his financial problems to being laid off in January 2011. At the time, he was making \$145,000-150,000 annually, and was generally not having any problems keeping up with his financial obligations. He received an unstated amount of severance pay (GE 2). He was unemployed until June 2016, when he obtained employment paying \$125,000 annually. In January 2012, he obtained a different job, earning \$128,000 annually. In January 2016, he resigned that position, and remained unemployed until June 2016, when he obtained his current position, earning \$124,000 annually (Tr. 41).

Applicant did not explain why he had Federal income tax liens filed against him in 2010, only that his January 2011 layoff made it difficult for him to keep up his payment plan, which he otherwise did not document. Similarly, during his February 2015 interview, he claimed to have just arranged a repayment plan on his education loans, to pay \$120 monthly. He could not recall the start or payoff dates for his repayment plan (GE 2). At hearing, he claimed, without corroboration to be paying \$1,000 monthly through direct withdrawal for about the last six months (Tr. 35-36).

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<sup>3</sup>Applicant had two other tax liens filed in 2010, which were satisfied (GE 4). Also not alleged in the SOR, Applicant had state tax garnishments issued against him in March and July 2013, which were satisfied. He had a June 2014 garnishment order for \$91,464.12 in delinquent education loans. In June 2014, he had a \$27,826 IRS levy for tax years 2005-2007 (GE 2). Applicant provided no independent documentation of his current tax status.

<sup>4</sup>The account statement showed no past-due amounts. The \$1,100 January monthly payment included unpaid fees, not otherwise specified.

Applicant documented no credit or financial counseling, and did not submit a budget. He provided no work or character references, or evidence of community involvement.

### **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>5</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant's unresolved May 2010 IRS tax lien highlights ongoing tax issues which Applicant has neither explained nor documented any resolution of. These issues appear to predate his January 2011 layoff, and the subsequent decline in income explains only the difficulty meeting any repayment obligations undertaken, not the need for a repayment plan. Similarly, the decline in income explains why the education loans fell delinquent, but does not

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

document any repayment efforts undertaken upon regaining employment, albeit at reduced salary.<sup>6</sup>

Applicant only partially meets the mitigating conditions for financial considerations. The precipitating layoff occurred over six years ago, not recent, and the circumstances are not likely to recur.<sup>7</sup> However, while the circumstances of that layoff were beyond his control,<sup>8</sup> he has not documented that he behaved responsibly under the circumstances. As early as February 2015, Applicant claimed to have taken steps to resolve his IRS and education loan issues, but aside from a single data point in December 2016, he has not documented the claimed regular payments on his education loans or documented any actions taken regarding the IRS lien.<sup>9</sup>

Applicant has neither claimed nor documented any credit or financial counseling, and there is a dearth of evidence to show that his financial problems have been resolved or are under control.<sup>10</sup> This failure of evidence precludes a conclusion that Applicant has made a good-faith effort to address his debts.<sup>11</sup> Moreover, he submitted no work or character evidence which might support a whole-person assessment to overcome the security concerns raised by his conduct. I conclude Guideline F against Applicant.

### Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-f:	Against Applicant

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<sup>6</sup>¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; (e) consistent spending beyond one's means or frivolous or irresponsible spending . . . ;

<sup>7</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>8</sup>But not so his January 2016 resignation from his job, the financial impact of which Applicant did not document.

<sup>9</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>10</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>11</sup>¶20(d) the individual initiated and is adhering to 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