



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 16-03093
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esquire, Department Counsel  
For Applicant: Gregory F. Greiner, Esquire

02/06/2019

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 5 December 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline D, Sexual Behavior, Guideline J, Criminal Conduct, Guideline E, Personal Conduct, and 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

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, and Applicant Exhibits (AE) A-K. AE K was timely received post hearing. AE J was admitted for the sole purpose of identifying AE A-I for the record (Tr. 15-16).

<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.

to me 26 September 2017, and I convened a hearing 15 December 2017. DOHA received the transcript 2 January 2018, and the record closed.

### **Findings of Fact**

Applicant admitted the SOR allegations, except SOR 3.a and paragraph 4. He is a 37-year-old enterprise director engineer employed by a U.S. defense contractor since August 2017.<sup>3</sup> He served honorably in the U.S. military from June 2000 to July 2009, and in a reserve component from August 2009 to March 2011. He had a favorable background investigation, with clearance issued, in September 2009 (GE 2), and a favorable reinvestigation in early 2011 (GE 1). This investigation appears to be due to a break in service requiring reinvestigation.

In July 1999, and again in November 2010, Applicant was arrested for soliciting prostitution in undercover operations. He was found guilty of disturbing the peace, and given minimal sentences involving fines, school attendance, and community service, all of which he successfully completed. His attorneys told him that the charges would eventually be dismissed. Applicant attributed these arrests to his experiencing particularly stressful times in his life. In July 1999, he was avoiding going home to an abusive relationship with his father (Tr. 22). In November 2010, he was going through a contentious separation—and ultimately divorce—with his wife, as well as trying to get ready to go to college (Tr. 23).

Applicant did not disclose the November 2010 arrest on either his January 2011 (GE 2) or November 2013 (GE 1) clearance applications. He also failed to disclose six delinquent debts on his November 2013 clearance application. He admits the omissions, but denies any intent to mislead the Government. In each instance, he was being pressed by his employer to complete the applications quickly because of operational requirements overseas (Tr. 29).

The SOR also alleges, Government exhibits substantiate, but Applicant denies ten delinquent debts totaling over \$24,000. Record evidence shows that SOR 1.j is a duplicate of SOR 1.a,<sup>4</sup> so there are nine debts totaling nearly \$21,000 at issue. The debts comprise a delinquent utility bill (SOR 1.d), two delinquent medical bills (SOR 1.f, 1.g), and six delinquent education loans (SOR 1.a-1.c, 1.e, and 1.h-1.l) .

Applicant offered a number of exhibits to demonstrate that all the SOR-alleged debts had been satisfied, some more efficacious than others. AE F shows that SOR

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<sup>3</sup>This is a different contractor than originally sponsored his November 2013 clearance application.

<sup>4</sup>The account number for SOR 1.j listed in GE 7 matches the account number for SOR 1.a listed in GE 6 in pertinent part, sufficient to conclude the accounts are the same.

debt 1.d was paid in full in March 2017.<sup>5</sup> AE G and H show that SOR debts 1.f and 1.g, respectively, were canceled and returned to the creditor with zero balances in November 2017.<sup>6</sup> Although these three debts were not addressed until after Applicant received the SOR, the amounts involved are minimal, and the security concerns raised de minimus

However, the remaining education loans are not so easily resolved. AE D—March 2017 correspondence from the collection agent for the SOR 4.a creditor on behalf of one of the colleges Applicant attended—reflects that a \$4,631.22 balance was settled for an unspecified amount. However, none of the account numbers or other identifying numbers listed in the correspondence match the account numbers listed in GE 6 or 7, although the delinquent amounts in GE 6 and AE D are similar. Similarly, AE E reflects that two defaulted loans held by the SOR 4.b and 4.c creditor were paid in March 2017, but contains no identifying numbers (account numbers or balances paid) to match AE E to the 4.b and 4.c numbers listed in GE 6. Applicant asserts (Tr. 36) that AE C shows that the education loans at SOR 1.h and 1.i have also been paid as of March 2017. But again, neither account numbers or balances appear to confirm that claim.

Federally guaranteed student loans are difficult to track through credit reports because of the way the loans are issued, defaulted, consolidated, and rehabilitated, seldom with the same account numbers attached to the accounts. Education programs change names, further complicating deciphering the process. Ultimately, all the loans are guaranteed by the U.S. Department of Education (DOE). However, there are direct student loans (made by the DOE) and indirect student loans (made by private lenders through DOE programs). A given loan may have multiple parties involved in its management, any or all of whom may report its status to the credit bureaus. Thus, for example, Applicant's January 2014 credit report contains multiple entries from the lender at SOR 1.e (and its education loan arm) in current status because the loans chronicled were in deferred status at the time and transferred to another holder. It also shows an account moving into late payment status, and being transferred to the DOE, where it was ultimately paid. A further example, AE C, is a compendium of documents purporting to show Applicant's loan settlement with DOE. Nevertheless, the connection is difficult to make.<sup>7</sup> The documents show, without account numbers, six loans

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<sup>5</sup>SOR debt 1.d—a utility bill incurred when a final bill was not forwarded after Applicant moved from a residence and closed the account—appears on Applicant's January 2014 credit report (GE 7) and was first reported delinquent in March 2013. The reported account numbers on GE 7 and AE F match.

<sup>6</sup>Again, the debts originally appear in GE 7, and the account numbers in GE 7 match the account numbers in AE G and H.

<sup>7</sup>The first page of the exhibit is the first page of a 3 March 2017 letter from the DOE, regarding an account number that appears nowhere else in the record, whereby DOE accepts a \$9,250 payment as settlement in full of "defaulted student loan(s) and/or grant overpayment(s)." The next two pages are a 22 July 2014 letter from the then collection agent for DOE, referencing the same account number, offering to settle Applicant's defaulted loans for that amount. The fourth page is a screen shot of an otherwise-unidentified "Federal Student Aid" web page, which reflects six disbursed loans totaling \$18,239 and six disbursed grants totaling \$17,097, as of 19 December 2016. The next 11 pages consist of a National Student Loan Data System printout with

guaranteed by DOE, two direct,<sup>8</sup> four indirect. The four indirect loans were all to the educational institution in AE A (which shows all school charges paid). All four indirect loans were made by the same bank alleged as one of the creditors on SOR debt 1.e, and guaranteed by the same “Guaranty Agency” as the creditor on SOR debts 1.b and 1.c. The first two indirect loans totaled \$4,168, were serviced by the other creditor on SOR debt 1.e, and were listed as defaulted but paid in full effective 1 March 2017.<sup>9</sup> The last two indirect loans totaled \$5,334, but serviced by a creditor not alleged on the SOR, and were listed as defaulted but paid in full effective 1 and 2 May 2014 [AE C, K(1)].

Applicant’s January 2014 credit report (GE 7) shows SOR debts 4.e-4.j, as alleged, encompassing the education loans, with complete account numbers, at SOR 4.e and 4.h-4.j, with 4.j being a duplicate of SOR 4.a, which appears on Applicant’s September 2016 credit report (GE 6), with account number as alleged, along with education loans 4.b and 4.c (account numbers as alleged), as well as SOR debt 4.d. SOR debt 4.e also appears on GE 6 (with an account number matching GE 7) with the same lender as alleged in the SOR, but a different servicing agent.

Applicant attributed his education loan problems to his not understanding the interplay between the school payments being made through the military tuition assistance program, his grants, and his education loans. He stated that he did not understand that the military tuition assistance did not cover all his education expenses (Tr. 31-33). However, he acknowledges getting dunning letters from the creditors at SOR 1.a-1.c and 1.h-1.l beginning in 2011 (Tr. 31, 36, 51-52). He thought the creditors did not adequately explain where his military tuition assistance payments went. His credit reports (GE 6, 7) show that he disputed these education loans with the credit bureaus, but no changes were made. Further, he produced little in the way of documentation showing his efforts to resolve the loans before he received the SOR. Nevertheless, when he received the SOR, he renewed his efforts to resolve his education loans (Tr. 35, 53-54).

Applicant documented no credit or financial counseling, and did not submit a budget. He stated he had \$8,181 positive bi-monthly cash flow (Tr. 58). His work and character references (GE I, Answer) consider him honest and trustworthy and recommend him for his clearance. However, none of them states any knowledge of the SOR issues.

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the detailed, but not necessarily decipherable, status of Applicant’s loans and grants. The grants are not at issue in the SOR, so I have given no consideration to those entries.

<sup>8</sup>The two direct loans total \$8,737, were being serviced directly by the DOE Debt Management and Collections System (not the creditor alleged at SOR 4.a), and were listed as defaulted but paid in full effective 23 July 2014. The two direct loans were for the educational institution in AE B, which shows that all Applicant’s charges at the school have been paid.

<sup>9</sup>AE K(2) shows that on 15 November 2015 the loan balances totaled \$5,706.14.

## 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 guidelines are Guideline D (Sexual Behavior), Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and 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>10</sup>

## Analysis

The Government established a case for disqualification under Guidelines D and J by demonstrating Applicant's two arrests for soliciting prostitution.<sup>11</sup> However, Applicant mitigated the security concerns by demonstrating that the charges had been significantly reduced, the arrests were infrequent and occurred under particularly stressful circumstances, and the most recent arrest had occurred over seven years ago.<sup>12</sup>

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<sup>10</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>11</sup>¶13(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted; ¶31(b) evidence . . . of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;

<sup>12</sup>¶14(b) the sexual behavior happened so long ago, so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment; ¶32(a) so much time has elapsed since the criminal behavior happened, or it happened under such

The Government failed to establish a case for disqualification under Guideline E. Cross-referencing the sexual behavior under Guideline E (SOR 3.a) adds no security concerns that are not otherwise covered under the guidelines for sexual behavior and criminal conduct. Moreover, I found credible Applicant's testimony that he rushed through his clearance applications, and thus lacked intent to falsify his applications or mislead the Government.

However, the Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant accumulated significant delinquent debt, as Federally-guaranteed education loans, and largely ignored these obligations until after he received the SOR.<sup>13</sup>

Applicant meets none of the mitigating conditions for financial considerations. The conduct was recent, frequent, and the circumstances were not unusual.<sup>14</sup> Beginning in 2011, Applicant was aware that his understanding of what his military tuition assistance covered was incorrect. After this point, the circumstances of his financial problems were certainly within his control, and he was irresponsible in addressing his debts until after he received the SOR.<sup>15</sup> He did not document his claimed efforts to deal with his lenders after becoming aware of his defaulted education loans

Applicant has neither claimed nor documented any credit or financial counseling. Assuming the best-case scenario, Applicant has apparently made a number of payments to resolve education loans that may or may not correspond to the education loans alleged in the SOR.<sup>16</sup> However, even if I concluded that the payments received cover the accounts alleged, the fact remains that these were not undertaken until after he received the SOR. This precludes a conclusion that Applicant has made a good-faith effort to address his debts.<sup>17</sup> The Government is not the collection agent of last resort. Applicants are expected to meet their financial obligations for moral reasons and legal requirements. Applicant's belated efforts to address his education loans may have reached the point where he may be considered to have resolved them, he cannot

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unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment;

<sup>13</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;

<sup>14</sup> ¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>15</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>16</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>17</sup> ¶20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

escape the security concerns raised by the fact that he did not resolve them until after he received the SOR. Moreover, his work and character references were unaware of his financial problems, undercutting their ability to 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 D:	FOR APPLICANT
Subparagraphs a-b:	Against Applicant
Paragraph 2. Guideline J:	For APPLICANT
Subparagraph a:	For Applicant
Paragraph 3. Guideline E:	FOR APPLICANT
Subparagraphs a-d:	For Applicant
Paragraph 4. Guideline F:	AGAINST APPLICANT
Subparagraphs a-c, e, h-i:	Against Applicant
Subparagraphs d, f-g, j:	For Applicant

### **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