



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-05558
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

06/26/2013

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

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

On 10 August 2012, 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 decision without hearing. The record in this case closed 19 February 2013, the day Department Counsel stated no objection to Applicant's response (Response) to the Government's File of Relevant Material (FORM). DOHA assigned the case to me 20 February 2013.

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<sup>1</sup>Consisting of the FORM, Items 1-9 and Applicant's response, Items A-G.

<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. She is a 53-year-old office administrator employed by a defense contractor since August 2009. She was previously employed by the same employer at an office on the other side of the country from where she currently works. She received her first security clearance in April 2004, when she was employed by the Government.

The SOR alleges, Government exhibits (Items 7-8) substantiate, and Applicant admits two delinquent accounts totaling over \$403,000. The debts consist of a first mortgage and a home equity loan on the marital home she owned with her exhusband. The delinquent debts are directly attributable to her separating from her husband in April 2009, her subsequent divorce in May 2010 (Response, Item G), and the decline in the housing market. The debts became delinquent in December 2009, when Applicant became unable to make the payments on her own.

Applicant is thrice married, thrice divorced. She has two adult children with her first husband, no children with her second husband, and an adult step-daughter with her third husband. The step-daughter precipitated the events which led to the separation and divorce.

In 2008, Applicant began experiencing marital problems with her exhusband over his adult daughter, who had a drug abuse problem. Applicant had discovered a crude, hand-drawn cartoon made by her step-daughter (Response, Item A) depicting the murder of Applicant by her step-daughter. Applicant took the implied threat seriously, and Applicant and her exhusband agreed that his daughter would not be allowed to live in the marital home. However, around April 2009, the step-daughter experienced a recurrence of her drug abuse, and her father allowed her to move back into the marital home. Applicant and her exhusband fought about his letting his daughter return.

Applicant felt unsafe in her own home, and decided to leave her husband. She resigned from her job effective May 2009 (Response, Item D), took money out of her retirement account, and moved across the country to be near her children and other family. She lived with her mother for a time before getting resettled.

In July 2009, Applicant noticed on her former employer's website that the company had a job opening in her area, about an hour's drive from where she was living. Her previous position with the company had also been about an hour's commute. She inquired about the opening through one of her former co-workers (Response, Item F), and was eventually rehired by the company at the end of August 2009 (Response, Item E.).

When Applicant separated from her exhusband in April 2009, he agreed to make the mortgage payments on the marital home while he continued to live there and the loan could be transferred to his name (Item 6). He made the June and July 2009 payments (Response, Item C), but did not make the August payment. When Applicant

discovered this fact, she put the house up for sale in September 2009 (Response, Item B). She could not get a loan modification on the property because it was no longer her primary residence. She had no offers on the property until February 2011, when she got a short-sale offer that her lender would not approve. The house is currently in foreclosure, which she hopes to avoid by executing a deed in lieu of foreclosure or executing a short sale of the property. Her exhusband has executed a quit claim deed on the property, which should make selling the property easier. The circumstances on the home equity loan parallel those on the first mortgage, except that the lender has charged the loan off.

Aside from the outstanding mortgage and home equity loans, Applicant has no other delinquent debts. She used her retirement fund withdrawal to tide her over until she regained full-time employment in August 2009.

### **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>3</sup>

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant had a mortgage and equity loan that became unmanageable in 2009.<sup>4</sup>

The mitigating factors for financial considerations give Applicant mixed aid. Her financial difficulties are neither recent nor numerous, and the circumstances that caused them are unlikely to recur.<sup>5</sup> The underlying circumstances that caused her to leave her husband in April 2009, and his failure to continue to pay the mortgage and home equity loan as agreed, were beyond her control. And while she was unable to continue making the payments on her own, she continued to make them through December 2009, after which she made a sensible decision to keep her other accounts current.<sup>6</sup> While there is no evidence that Applicant has had any financial or credit counseling, she has clearly acted to get her finances under control.<sup>7</sup> Aside from the two loans alleged in the SOR, Applicant is current on all her other accounts. Unable to make the mortgage and equity payments on her own, she took reasonable steps to try to resolve the debts, seeking first to sell the property, then to obtain a short sale. If she is unsuccessful in obtaining a short sale, she will execute a deed in lieu of foreclosure. Under her circumstances, this constitutes a good-faith effort to resolve both debts.<sup>8</sup>

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.<sup>9</sup> Applicant's listing the property for sale and getting a quit claim deed from her husband to facilitate any sale reflect significant actions. I conclude Guideline F for Applicant.

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<sup>4</sup>¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>5</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>6</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>7</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>8</sup>¶20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>9</sup>ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

**Formal Findings**

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-b: For Applicant

**Conclusion**

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR.  
Administrative Judge