



## Findings of Fact

Applicant admitted SOR allegations 1.a-1e and 1g. He denied SOR 1.f, 1.i, and 1.j as having been paid or settled. He denied SOR 1.h as a duplicate of SOR 1.d. He is a 59-year-old engineer employed as a defense contractor since October 2010. He was previously employed in a similar position with a different defense contractor from November 1979 to September 2010 (GE 1). Simultaneously with his civilian employment, he served in the military reserves from September 1976 to December 2006. He is a highly-decorated veteran, having served honorably in paygrades up to E-8. The record does not reflect whether he is entitled to retirement pay for his military service. However, he is receiving service connected compensation, and in July 2014 he received a \$46,000 lump sum payment for amounts due back to July 2011 (Answer). Applicant seeks to retain the clearance he has held, as needed, since entering the military in September 1976.

The SOR alleges and Government exhibits (GE 1-5) establish, ten delinquent collection accounts totaling over \$440,000. Applicant admits six delinquent collection accounts totaling over \$300,000. Over \$410,000 of the debt is for five delinquent real estate loans (SOR 1.a-1.d and 1.h) and a judgment for delinquent homeowner's association dues (SOR 1.e). Applicant reported SOR debts 1.b and 1.d on his January 2012 clearance application (GE 1). He discussed SOR debts 1.b, 1.d, and 1.h during his February 2012 subject interview with a Government investigator. He stated that his delinquent mortgages were in the process of loan modification. He reported the status of all the SOR debts except 1.h on his February 2014 response to DOHA interrogatories (GE 2).

Applicant's documentation (Answer, AE N) demonstrates that the cable bill at SOR 1.f has long been resolved. In approximately September 2013, Applicant contracted with a debt resolution company to resolve the consumer debt alleged at SOR 1.g, 1.i, and 1.j (Answer, AE I). Other debts not alleged in the SOR were also included in the program. Applicant was to pay \$617 monthly and the company in turn was to negotiate and pay settlements on the program debts. Applicant was current on his plan payments through November 2014. The company settled SOR debt 1.i in April 2014 for a 30% discount and settled SOR debt 1.j in June 2014 for a 50% discount. Applicant's program is still accumulating funds to resolve SOR debt 1.g and the other non-SOR debts.

Applicant and his brother have been in business together as real estate investors for about ten years. They bought six properties over the years to hold as rentals (Tr. 61). The properties they bought were in move-in condition. The six real estate debts alleged in the SOR involve an investment property that his brother currently lives in (SOR 1.a), Applicant's solely-owned home (SOR 1.b and 1.e), and two investment properties held for rental (SOR 1.c; 1.d and 1.h). Applicant traces his financial problems to around 2009, when he and his brother either could not keep tenants in the properties or the tenants had problems paying the rent because of the economic downturn of 2008. He also cites a brief period of unemployment from late October 2010 to January

2011 (GE 2). Applicant used funds intended for his personal residence to try to keep the business properties solvent, but ultimately was unsuccessful and all the properties fell into foreclosure. According to Applicant's brother, two of the properties are currently for sale, and they hope to have two more on the market by the end of December 2014 (Tr. 61-62).

Applicant is nearly \$72,000 past due on a mortgage balance of \$287,000 on SOR 1.a. The original lender sold the mortgage to another lender in May 2014 (Answer). Applicant applied for a loan modification with the new lender in June 2014. However, in his July 2014 Answer, Applicant was considering the possibility of a short sale, and by September 2014, Applicant was obtaining information from the lender about a short sale (AE N). Nevertheless, at hearing the plan now was to work for a loan modification and utilize a short sale only as a last resort (Tr. 66, 88). Applicant's December 2013 credit report (GE 4) and May 2014 credit report (GE 5) show the mortgage in foreclosure, with the last payments received in May or June 2011. The new holder of the note does not have made a report to the credit bureaus.

Applicant's May 2014 credit report (GE 5) shows the house at SOR 1.b (Applicant's personal residence) in foreclosure with a past due mortgage balance of \$101,000 on an original note of \$263,000 with a current balance of \$251,000. The past due balance has risen from \$43,312 in January 2012 (GE 3) to \$90,972 in December 2013 (GE 4) to the current balance. A November 2014 mortgage statement from the lender (AE C) shows a total balance, including interest, escrow payments, and late payment penalties of \$347,395. The balance includes a \$2,000 credit for "unapplied funds allocation." The mortgage statement and the three credit reports show that the last payment on the account was made in May 2010, and the mortgage is in foreclosure. Applicant attempted to make token payments on the account in November 2011, but the checks were returned<sup>3</sup> because the house was in foreclosure and the amount sent was inadequate to bring the account current (AE D). As of December 2014, the lender is reviewing Applicant's request for loan modification and the documents Applicant submitted in support of his request (AE C).

In addition to the mortgage foreclosure on his personal residence, Applicant's homeowner's association took him to court in June 2014 for nearly \$28,000 in unpaid condominium fees (SOR 1.e)(Answer). In a June 2014 consent judgment, Applicant agreed to pay \$400 monthly to resolve delinquent condominium fees, interest, attorneys' fees, and court costs totaling \$33,718, plus 10% post-judgment interest. Applicant has made the required monthly payments from June 2014 through November 2014, and the December 2014 payment was scheduled (AE M).

The mortgage at SOR 1.c was \$2,520 past due on an original loan of \$36,000 that had a current balance of \$34,767 in December 2013 (GE 4). However, the lender approved a loan modification in May 2014 (Answer), and by the November 2014 mortgage statement (AE F), the required payments had been made and the account

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<sup>3</sup>One was returned, and one is reflected on the November 2014 mortgage statement as the unapplied funds.

was considered current (Tr. 100). Applicant's brother has been making the payments on this investment property.

The final delinquent mortgages (SOR 1.d and 1.h) relate to a property Applicant and his brother bought in 2004. According to the original lender (AE J), the \$260,000 mortgage was dated December 2004, recorded in February 2005, and paid in April 2007. It is not clear whether the mortgage was refinanced through a new lender or sold by the original lender to a new lender. In any event, because Applicant did not ask the original lender who the successor-in-interest was until July 2014, the original lender was unable to tell Applicant who the successor was.<sup>4</sup> However, the original lender showed a \$256,325 mortgage balance in April 2006 and the two possible successors-in-interest reported opening balances of \$287,900.

Moreover, in his Answer, Applicant produced a series of letters from a different lender regarding the same property, but with a different account number. A May 2014 letter was a form letter offering generic help on \$117,724 in unpaid mortgage payments dating back to June 2009. A June 2014 mortgage statement reflected \$124,016 due on a principal balance of \$281,601. A 10 June 2014 Notice of Intent to Foreclose required a payment of \$124,016 to cure the default, but offered instructions to request loss mitigation, to which Applicant responded on 28 June 2014. The foreclosure notice recited a December 2010 payment applied to June 2009 and claimed status as a first lien.<sup>5</sup> A December 2014 mortgage statement (AE K) reflected \$135,988 due dating back to July 2009.

Competing with this claim, Applicant produced a March 2013 mortgage statement from a third lender, with a third account number, regarding the same

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<sup>4</sup>Applicant's January 2012 credit report (GE 3) reported the original loan with an account number matching Applicant's original account statement. The entry confirms the payment particulars as noted in AE J. The lender also reported that the account had been 30-days past due three times: November 2005-January 2006. However, the lender at SOR 1.d reports opening an account with a different account number in March 2007, with an original balance of \$287,900. The lender at SOR 1.h reports opening an account with a third different number in March 2007 with the same original balance. Both lenders report different past due balances, because the lender at SOR 1.d reports as of December 2011 (\$57,864) and the lender at SOR 1.h reports as of June 2011 (\$43,897). The lender at 1.d reported that Applicant was disputing the account information. In January 2012, each of the lenders in 1.d and 1.h reported through different credit bureaus. Adding to the confusion, the lender at 1.d reported opening an additional account with a fourth different number in March 2007 with an original balance of \$287,900, but closing it in August 2007 as transferred to another lender, transferred to another office, or sold. Applicant's December 2013 credit report (AE 4) does not contain an entry for lender 1.d, even though that lender reported through the same bureau in January 2012. The entry for lender 1.h (who did not report through this bureau in January 2012) reports that the past due balance had risen to \$107,631 as of November 2013. Applicant's May 2014 credit report—which is by the same credit bureau as lender 1.h reported to in January 2012 (GE 5)—contains entries from the original lender reporting the account as paid. It contains entries from lender 1.d's fourth account number above showing the account transferred or sold. It also contains a report from lender 1.d showing the SOR account balance at \$113,000 and the mortgage in foreclosure, and from lender 1.h showing the SOR account balance at \$124,000, but not in foreclosure.

<sup>5</sup>However, the January 2012 credit report (GE 3) reports this debt as a second mortgage.

property. The statement recited an original loan balance of \$287,900, an unpaid balance of \$281,601 (identical to the lender in 1.d), with a demand for \$91,193, dating back to September 2009. Applicant requested assistance from the original lender, who as noted above, was unable to identify the new lender because of the passage of time. However, Applicant's request for assistance contained an April 2006 mortgage statement from the original lender showing an unpaid principal balance at the time of \$256,325.

Applicant is an excellent employee (AE B). His work and character references (AE A) and his witnesses consider him honest and trustworthy and recommend him for his clearance. Most of them are aware of his financial problems. Indeed, some of them note that Applicant had borrowed money from them, but repaid the entire sums. Applicant does not appear to have received any credit or financial counseling. He has consulted with counselors regarding his rights and options in foreclosures (AE E). He reports \$12,385 positive monthly cash flow, but not including any mortgage payments on SOR 1.a, 1.b, or 1.d (GE 2).

### **Policies**

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. 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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>6</sup>

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<sup>6</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Since 2009, Applicant failed to keep up with his financial obligations, despite possessing the apparent means to do so.<sup>7</sup> When Applicant experienced tenant issues related to his investment properties, he tried to use funds intended for his personal residence to prop up these properties, eventually resulting in all the properties falling into foreclosure. Applicant has been indecisive in his dealing with his lenders, as a result of which most of the properties remain in no-man's land between foreclosure and loan modification. The prospective sale of some of the properties may clarify the situation, but those sales remain speculative.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, and the stated cause cannot be considered unlikely to recur because Applicant and his brother have not reached settlement agreements on their joint properties, and Applicant has only recently begun discussions with the lender on his personal residence.<sup>8</sup> Tenant issues related to the economic downturn can still be considered a circumstance beyond his control, as can his brief unemployment. However, I consider the unemployment a temporary delay in his ability to address his debts. Additionally, this event ended approximately four years ago in January 2011. Nevertheless, Applicant has only shown that he was responsible in dealing with the mortgage debt at SOR 1.c, his cable bill (SOR 1.f), and the consumer debts being resolved through the debt resolution company (SOR 1.g, 1.i, and 1.j). In reaching this conclusion, I have considered the fact that Applicant had been taking meaningful action to address these debts before the SOR was issued.<sup>9</sup>

In addition, the payments Applicant made, or attempted, on the consumer debts can be considered good-faith payments. I have given Applicant credit for the progress he has made on his consumer debts, even though one SOR debt is still pending resolution.<sup>10</sup>

The same considerations do not apply to Applicant's actions regarding his delinquent mortgage loans at SOR 1.a, 1.b, 1.d, and 1.h. These accounts have been delinquent, to include being in foreclosure, for several years. Moreover, although Applicant has been current on required plan payments on his delinquent condominium fees (SOR 1.e), that settlement was only reached after court action by the homeowners' association. Further, he took no action regarding some of these debts until after he

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<sup>7</sup>¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>8</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . . ;

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

received the SOR. Applicant's mishandling of his mortgage debts is best exemplified by the conundrum of the competing lenders at SOR 1.d and 1.h. It may be that the debts are duplicate claims as the legitimate successor-in-interest on a loan that was previously paid in April 2007, based on the similarities between origination dates, original loan balances, current loan balances, required monthly payments, and other figures. Yet, there is enough difference in some of the figures to raise a doubt that they are duplicates.

This is not merely a situation where there are competing entries on various credit reports. Applicant produced competing demands for payment by two lenders on the same property in March 2013 and June 2014. Whatever the mechanism for paying off the original lender in April 2007, the person best positioned to know which of the two competing lenders was the correct lender—and the person with the burden to establish that fact—is the Applicant. If he did not follow the documentation from his April 2007 satisfaction of the original mortgage, that is financially irresponsible in itself. Further, it seems unlikely that the March 2013 and June 2014 demands for payment were the first communications from these lenders. If Applicant ignored those communications until his clearance was up for renewal, that is also financially irresponsible.

Finally, beyond the debt resolution company's assistance in addressing his delinquent consumer accounts, there is no indication that Applicant has received credit or financial counseling as part of those services. Consequently, it is not clear, at least regarding the mortgage loans, that the problem is being resolved.<sup>11</sup>

The concern with Applicant is that while he may credibly state his intent to avoid financial problems in the future, and he may have the means overall to do so, he does not actually have any track record of doing so. Further, while his character and employment evidence provides significant evidence upon which to support a "whole person" analysis in favor of granting his clearance, I find that evidence insufficient to overcome the security concerns raised by four, if not, five, sizeable delinquent property accounts. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b, d-e, h	Against Applicant
Subparagraphs c, f-g, i-j:	For Applicant

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<sup>11</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;

## **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