



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



In the matter of: )  
)  
) ISCR Case No. 12-10070  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esquire, Department Counsel  
David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

10/30/2015

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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 5 September 2014, 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 17 August 2015 and I convened a hearing 7 October 2015. DOHA received the transcript 16 October 2015.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibit (HE) I, and Applicant exhibits (AE) A-K.

<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. He is a 47-year-old manufacturing engineer employed by a defense contractor since June 2009. Although this is his first clearance application (GE 1), he appears to have held an interim clearance since applying in June 2009. He seeks to retain the clearance permanently. He has been married for 18 years, and has four daughters—one from a brief first marriage—two of whom still live at home.

The SOR alleges, Government exhibits (GE 4-6) substantiate, and Applicant admits six delinquent accounts totaling nearly \$86,000. Over \$82,000 of that debt is for a delinquent first mortgage. The other debts consist of state tax debt and two unpaid medical accounts. Applicant also admits failing to file his state income tax returns in 2008 and 2009 (SOR 1.b) and filing for chapter 7 bankruptcy and receiving a discharge of all dischargeable debts in 2004 (SOR 1.f)(AE B).

Applicant attributes his chapter 7 bankruptcy petition in August 2004 to several factors. His fourth child was born in December 2003, and he had unexpectedly become the primary guardian of his older child from his first marriage. He was also assisting his mother-in-law when she was experiencing health and financial issues. Applicant found he could not manage the additional expenses, and rather than founder, he sought the new start provided by bankruptcy. His mother-in-law has since died.

The \$3,400 state tax debt at SOR debt 1.a was the result of Applicant's failure to timely file his state income tax returns for 2008 and 2009 (SOR 1.b). Applicant failed to timely file his 2008 state income tax return because he was having a disagreement with the state about his tax liability for 2008, a year in which he was unemployed for eight months between April and December. He failed to timely file his 2009 state income tax return because he had not filed his 2008 return, and the 2009 return would be predicated on the 2008 return. However, Applicant filed both returns in 2012, and he entered into a repayment agreement with the state in August 2013. Through his regular payments and diversion of his 2013 Federal income tax refund, Applicant paid the full balance by September 2014 (AE F).

Applicant believes he already paid the two medical debts at SOR 1.c and 1.d and is disputing the debts with the creditors. However, because he wanted to remove the potential security concerns raised by these debts, he paid them in October 2015 (AE D, E), preferring to pursue his dispute outside the clearance process.

When Applicant lost his employment in April 2008, he approached his lender about a loan modification or other mortgage relief. However, the relief offered required a lump-sum payment so large that if Applicant had that kind of money in the bank, he would not need the mortgage relief. The house fell into foreclosure, and Applicant eventually received a notice from the lender to vacate the house by October 2009,

which he did (AE C).<sup>3</sup> Since that time, Applicant has rented housing, and has been an excellent tenant at the two properties he has rented (AE J, K).

Applicant makes about \$70,000 per year. He has a budget (AE G), and a positive monthly cash flow of \$300-500 (Tr. 60). He and his wife have undertaken some self-help financial education (Tr. 55). He has about \$6,000 in a savings account. He has also resolved some miscellaneous debts that were not alleged in the SOR (AE H, I).

### **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>4</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced financial problems in

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<sup>3</sup>Unbeknownst to Applicant, the lender did not complete the foreclosure, but sold the house to another lender. The new lender started sending Applicant notices for payment, but Applicant initially did not examine the notices, thinking they must be a mistake. When he finally learned that the lender was essentially attempting to reinstate the mortgage, he attempted to negotiate some mortgage relief. But, as before, the relief offered required a large lump-sum payment out of Applicant's reach. The house is again in foreclosure, and Applicant is prepared to resolve any deficiency that should result from sale of the house.

<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

2003, when his family circumstances changed unexpectedly, and again in 2008, when he was unemployed for eight months.<sup>5</sup>

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, Applicant's employment is now stable; so the circumstances that caused them most recently are less likely to recur.<sup>6</sup> Further, his financial problems were largely due to circumstances beyond his control, and he began addressing his delinquent debts once he obtained stable employment in June 2009. He has continued to address his other delinquent debts since then, including debts that were not alleged in the SOR.<sup>7</sup> He and his wife have undertaken some financial education, and he has clearly acted to get his finances under control.<sup>8</sup> He resolved his state income tax debt before the SOR was issued. The only debt not completely resolved is his foreclosed mortgage. However, he is prepared to resolve any deficiency that remains. Having addressed his other financial obligations, I am confident this final obligation will also be addressed, if necessary. Overall, substantial progress has been made addressing his delinquent debt.<sup>9</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>10</sup> Applicant's efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

### Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-f:	For Applicant

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<sup>5</sup>¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>6</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>7</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>8</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>9</sup>¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>10</sup>ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

## **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