



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



In the matter of:	)	
	)	
XXXXXX, Xxxxxx XXXXXXXX, Xxx	)	ISCR Case No. 14-01042
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

12/31/2015

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 4 May 2015, 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 1 July 2015 and I convened a hearing 20 August 2015. DOHA received the transcript 28 August 2015.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits (AE) A-I. AE I was timely received post-hearing.

<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 61-year-old company owner seeking a U.S. defense contract since May 2012. He has been sponsored for a clearance by a prospective prime contractor since September 2013. He previously retired from the U.S. military after 22-years service in paygrade W-4. He then worked as a civilian employee of another Government agency for nearly 10 years. He seeks reinstatement of the clearance he has held, as needed, since January 1972.

Applicant entered the U.S. military in January 1972. He has been married since December 1972. He and his wife have three children: a daughter born in December 1975, a son born in July 1982, and another daughter born in December 1989. Applicant's oldest child, a doctor of psychology, lives with Applicant and his wife, as does her daughter, Applicant's granddaughter. Applicant's son lives in another state, in a house owned by Applicant until recently. Applicant's father lives in a "mother-in-law" house on the same property.<sup>3</sup> Applicant's second daughter, who has learning disabilities, lives with her brother while she is attending college.

Applicant obtained his undergraduate degree in May 1982, while he was in the military. He obtained his master's degree in business and public administration in June 1993, just before he retired from the military. His wife is an accountant. She earns about \$30,000 annually. Applicant's military retirement is also about \$30,000 annually.

The SOR alleges, Applicant admits, and Government exhibits substantiate, seven delinquent accounts totaling over \$115,000. All the debt is consumer credit card debt owed to two creditors. Applicant reported eight delinquent debts totaling \$124,572 on his September 2013 clearance application (GE 1). He reported the SOR debts, totaling \$112,417 at the time, along with his wife's delinquent credit card totaling \$112,155.

Between July 2013 and February 2014, the creditor for SOR debts 1.a-1.e cancelled a total of \$44,086 for the five accounts. In September 2014, the creditor for his wife's debt offered to settle the account for a single \$2,600 payment made by the end of the month (AE I), which Applicant's wife accepted and paid. The two creditors on these six accounts provided Applicant with appropriate Forms 1099-C reflecting the

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<sup>3</sup>Applicant's son and his family have lived in the house the last five years. His son suffers from post-traumatic stress disorder (PTSD) related to his two deployments to war zones as a Government civilian (AE F), and receives disability payments. He had been living in his father's other house with some financial assistance from Applicant. However, the son's mother-in-law recently died, leaving an inheritance large enough for the son and his wife to put a large down payment on the house so they could obtain a mortgage and buy the house from Applicant. The sale closed in August 2015 (Tr. 39-40), reducing Applicant's financial outlays and providing continued housing for his father.

cancellation of these debts (AE B).<sup>4</sup> Applicant declared the cancelled debts as income for the appropriate tax years, as required by the Internal Revenue Service (IRS)(AE C). According to Applicant, the creditor on the other two credit cards has charged off the accounts, but has not provided him with Forms 1099-C (Tr. 57, 68). However, the state statute of limitations for these two debts expired in January 2015 (Tr. 63).

The seeds of Applicant's financial problems were planted in 2008. Applicant left his Government employment in June 2005, to pursue work with a Government contractor that offered the possibility of further advancement. He did well with the company, and was responsible for the company's contracting efforts with the Government. However, in early 2008, the company decided to leave the Government contracting arena because of perceived inadequate profit margins, and focus on its core business. Applicant's work qualifications left him well qualified in Government contracting, but not particularly well suited to the company's core business, and he and his employer agreed to part company. Nevertheless, some of his work colleagues and Federal contracting contacts urged him to go into consulting work with the Government based on the contacts he had made in the Federal sector, and anticipating that there was Government contracting work available in the future. Applicant established his consulting firm in April 2008.

Of course, 2008 was the start of the great recession. By June 2008, it became clear to Applicant that the expected contracts were not materializing. Nevertheless, the economic predictions at the time suggested only a fairly short downturn in Government contracting. Applicant used the credit cards alleged in the SOR to try to keep his business going until Government contracting picked up, and to pay regular living expenses while he had no income from his company. However, he continued to look for regular employment along with Government contracting, and he received unemployment benefits.

In November 2008, Applicant received a job offer for a high-paying job, deploying overseas with a Government contractor, beginning in January 2009 (Tr. 65). Applicant accepted the job and deployed overseas until May 2010. He closed his consulting business. The high overseas salary allowed him to keep up the payments on his credit cards. After his overseas deployment, Applicant look a job with a subsidiary of the same company back in the U.S., as the general manager. His reduced salary in the U.S. was still enough for him to make his credit card payments.

In February 2012, Applicant's company restructured. The restructured company expected its managers to have business development backgrounds, a skill set Applicant lacked (his skills were technical and managerial), and he was let go in May 2012. He was unemployed for about nine months. Applicant established another consulting

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<sup>4</sup>The amounts cancelled are less than the amounts alleged in the SOR, or reported by Applicant in his clearance application, because the creditors may only cancel accumulated principal and interest up to the date the creditor charged off the debt as a bad debt (Tr. 56), whereas the balances reported on credit reports may continue to rise.

company, and began looking for work, while again receiving unemployment benefits. However, he was unable to keep up with his credit card payments.

He remained unemployed until he obtained part-time unclassified employment with the company that is sponsoring his request for a clearance. The contract he was working on expired in March 2015, and he was unemployed again until June 2015, when he took a job selling new cars (Tr. 49-50). If he obtains his clearance, he has a job offer from this company, as well as at least one other (Tr. 52).

Over the time Applicant was unemployed or underemployed, he investigated a number of alternatives for dealing with his delinquent debts. Although his wife works as an accountant, and he has his military retirement income, his income stream was otherwise unpredictable. The creditors were unwilling to accept a flexible payment arrangement, and he was unable to commit to the fixed repayments they demanded. At a certain point, the creditors would not agree to any repayment plan, insisting instead on a significant lump-sum payment to settle the accounts—sums Applicant was unable to manage.

Applicant explored Chapter 7 bankruptcy in January 2013, and a petition was prepared, but never filed (AE H). Applicant was worried that if he filed for bankruptcy protection, he would lose one or the other of his homes, either putting himself or his son and father out on the street. Consequently, he took extraordinary measures to ensure that he continued payments on both mortgages. He restructured the mortgage on his personal residence to free up money to pay his bills. He exhausted his retirement accounts (and paid taxes on the income).

With the sale of the other house to his son, Applicant's monthly cash flow increases \$600-700 monthly. That will improve the family's current \$75,000 annual income. However, Applicant's salary alone (currently about \$20,000) would balloon to about \$150,000 annually if he got his clearance (Tr. 52).

Applicant received financial counseling as part of his bankruptcy process. He also has a degree in business management and his wife is an accountant. Applicant's work and character references (a cross section from both his military career and post-career employment) consider him honest and trustworthy and recommend him for his clearance (AE D). There is no record of any security violations during any time he held a clearance.

## **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, but Applicant mitigated the security concerns. Applicant's unemployment from April to December 2008 and from June to December 2012, as well as his unemployment and underemployment from December 2012 to the present created financial problems for him.<sup>6</sup> Despite the financial problems begun with his 2008 employment, Applicant was able to keep his finances in order until June 2012.

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, the prospective employments awaiting the granting of his clearance suggest that the circumstances that caused them are less likely to recur.<sup>7</sup> Further, his financial problems were largely due to circumstances beyond his control, and he acted responsibly during both major unemployment periods. Department Counsel argued that Applicant was financially irresponsible by waiting too long before shuttering his first business in December 2008. Setting aside the fact that the 2008 recession required greater clairvoyance than most economists brought to the picture, and the fact that any worthy effort to start a business can easily take more than eight months, the fact remains that Applicant was looking for other full-time work by June 2008, less than three months after he started his company. This was hardly irresponsible behavior. Applicant's 2008 unemployment would have

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

<sup>6</sup>¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<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 . . .

happened whether Applicant started his company or not.<sup>8</sup> Furthermore, even if it was irresponsible to not shutter his first business any sooner, that irresponsibility was cured by Applicant's obtaining good employment in January 2009 and keeping his finances in order until 2012. Moreover, Applicant would have lost his job in June 2012, whether he started a second company or not. However, in this instance as well, he was pursuing regular employment while also trying to obtain contracts for his company. Furthermore, after Applicant lost his job in June 2012, he tried, without success, to work with his creditors to resolve the SOR debts through repayment plans.

Applicant received financial counseling as part of his exploration of bankruptcy in January 2013, and he continued to work to get his finances under control.<sup>9</sup> Both he and his wife have professional backgrounds that should ensure their financial success once Applicant obtains the better employment that will be available to him once he obtains his clearance. Applicant declined to file for bankruptcy protection to ensure that he could continue to provide housing for his father and his children, not an unreasonable choice under the circumstances. He was prepared to work with his creditors to establish repayment plans. That the debts were resolved by cancellation and charge off was as much the creditors' choice as Applicant's. Overall, substantial progress has been made addressing his delinquent debt.<sup>10</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>11</sup> Applicant's efforts to date constitute such a plan, and his consistent contacts with his creditors—before the SOR was issued—reflect significant actions. Finally, Applicant's record of military and Government service, his record of appropriate handling of classified information in the past, and the favorable work and character references he provided establish a strong "whole person" analysis in favor of granting Applicant's clearance. I conclude Guideline F for Applicant.

### Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-g: For Applicant

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<sup>8</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>9</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>10</sup>¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>11</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