



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



In the matter of:	)	
	)	
XXXX, Xxxxx Xxx	)	ISCR Case No. 14-02619
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

01/14/2016

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 7 November 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant 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 4 March 2015, and I convened a hearing 20 April 2015. DOHA received the transcript (Tr.) 27 April 2015.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, hearing exhibit (HE) I and Applicant exhibits (AE) A-H. AE C-H were timely received post hearing. The record in this case closed 18 May 2015, the day Department Counsel indicated no objection to AE H.

<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 allegations 1.a and 1.c-1g. He denied SOR 1.b, 1.h, and 1.i as having been paid. He is a 59-year-old foreman employed by a defense contractor since January 2013. He was previously employed as a cable installer from April 2000 to December 2012. Applicant served in the U.S. military from October 1975 until November 1997, when he retired in paygrade E-7. His current monthly retirement is \$1,800. Applicant's wife resigned from her Government employment in 2004, before she reached retirement age. Since then, she has been employed as a commissioned sales person. She estimates her annual pay at \$80,000-120,000, but not spread evenly throughout the year (Tr. 105).

Applicant admits receiving a February 2009 SOR alleging \$66,000 in delinquent debt, of which \$24,000 was to the Internal Revenue Service (IRS). He had a security clearance hearing before DOHA in May 2009, and received a favorable decision from DOHA in July 2009 (GE 6). Except as noted below, I incorporate the July 2009 decision by reference.

The seven delinquent debts alleged in February 2009 essentially broke down into three comparatively small debts that Applicant had resolved completely by the date of the hearing and three larger accounts for which Applicant had entered into repayment plans with the creditors. Two of the debts were to the same creditor, for a credit card and a home-equity loan, and were combined for a total debt of almost \$38,000. The IRS debt had grown to \$35,000 and the IRS had begun to garnish Applicant's wages. Applicant paid \$8,700 on the account, the IRS released the lien and stopped the garnishment, and Applicant agreed to pay \$415 monthly (GE 6). Applicant continued to make payments on his delinquent taxes.<sup>3</sup> However, after the double payment in August 2010, he made no further payment until February 2011, then skipped payments until June 2011. He then missed payments through August 2011.<sup>4</sup>

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<sup>3</sup>Applicant's IRS records (GE 2; AE C) show that Applicant's pay was garnished in April and May 2008 for tax year 2004. He made two miscellaneous payments of different amounts in June 2008 and three payments in November 2008. He made one payment in December 2008, before making a lump-sum payment of \$8,700 in December 2008, at the time he established an installment agreement. He never actually paid \$415 monthly. It seems that the expected payment was \$450 monthly. Beginning in February 2009, Applicant's payments ranged from \$445 to \$550 monthly. He made regular payments from February to June 2009, then missed July 2009. He made payments from August to October 2009, then missed November 2009. He made the December 2009 payment, then missed January 2010. He made two payments in February 2010, missed March 2010, then made a payment in April 2010. He made no more payments until August 2010, when he made a double payment. In the meantime, the IRS had been seizing his income tax refunds for ensuing years.

<sup>4</sup>The IRS took some action against Applicant in August 2011, and Applicant made a \$400 payment in September 2011. Beginning in January 2012, Applicant made assorted payments of varying amounts until November 2012, when the combination of payments and credits transferred in from other tax years reduced the 2004 tax liability to zero.

To resolve the home-equity loan/credit card, Applicant agreed to pay \$33,000 by making eight token payments with a large balloon payment in September 2009,<sup>5</sup> to be paid with a large commission payment that Applicant's wife was expecting. The large commission never materialized. Nor did the promised payments, at least on the time line agreed to. Applicant was unable to make the monthly payments as scheduled, taking 17 months to make the preliminary portion of the payments. He then stopped making payments for over three years.<sup>6</sup>

Finally, Applicant agreed to resolve a \$3,800 delinquent credit card debt by paying \$200 monthly until the debt was paid. GE 3 and 4 appear to show that the debt was paid in due course as promised.

Although the Administrative Judge in the 2009 decision found Applicant's wife's income projections for the remainder of 2009 to be overly optimistic, he nevertheless considered that the combined \$700,000 equity in the three homes they owned would be adequate to resolve the home-equity debt if they were unable to make the promised lump-sum payment in October 2009. He certainly assumed that this debt would be satisfied in due course. He also considered that Applicant and his wife would have fewer pressures on their finances because they would have fewer elderly parents to care for. Both of Applicant's parents and his father-in-law had died after challenging health issues which contributed to Applicant's financial problems.<sup>7</sup> However, even the Administrative Judge's assessment of Applicant's home equity turned out to be overly optimistic. Although he has \$500,000 equity in his personal residence, the inherited properties turned out to be essentially worthless over time.

Beyond the 2009 DOHA decision, the SOR alleges, and Government exhibits (GE 3, 4) establish eight delinquent debts totaling over \$32,000. All the debts are new

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<sup>5</sup>Applicant was to pay \$750 monthly from February 2009 through September 2009, then make a lump-sum payment of \$27,000.

<sup>6</sup>Regarding the delinquent home-equity obligation: Applicant made the February 2009 payment, but then missed the March and April 2009 payments. He made the May and June 2009 payments, but missed the July and August 2009 payments. He paid September and October 2009, missed November 2009, then paid December 2009. He made no payment from January to March 2010, then made a \$700 payment in April 2010. He made no payment from May to July 2010, then made a \$750 payment in August 2010, 11 months after the payment was supposed to have been made (AE E). Applicant then stopped making any payments on the account, much less the lump-sum payment agreed to, because his wife had supposedly discovered that the bank to whom they owed the debt was on a U.S. Government watch list as a result of alleged foreign connections (Answer). Applicant did not resume payments on the debt until October 2013, when he made a \$4,000 payment. He made \$5,000 payments in November 2013, December 2013, February 2014, and March 2014 (GE 3). Applicant described the latter two payments as the January and February 2014 payments. Applicant then made \$5,000 payments in April 2014, May 2014, and June 2014 (AE E). Applicant paid \$49,950 total by June 2014. In August 2014, Applicant requested a payoff balance from the creditor. He itemized the October 2013-June 2014 payments (\$39,000), but included all the check copies from February 2009-June 2014 (another \$5,950). He also included a hand-written accounting, showing only the \$39,000 payment and a supposed overpayment of \$2,901.

<sup>7</sup>Applicant's mother-in-law died in 2012 (Tr. 114).

since the 2009 hearing, except for SOR 1.e and 1.f, Applicant's unresolved tax delinquencies from 2006 and 2007. Applicant's credit reports (GE 3, 4), his response to DOHA interrogatories (GE 2), and a post-hearing exhibit (AE E) reflect accounts that were delinquent after his 2009 hearing that are now current, as well as belated efforts to satisfy a debt from the 2009 hearing.

Applicant admits five debts over \$30,000. He denied three debts totaling almost \$2,000, claiming they were paid. AE D documented that SOR debt 1.b was paid in November 2012. Applicant's Answer documented that SOR debt 1.h was paid in June 2014 (Attachment 4), and SOR debt 1.i was paid in May 2014 (Attachment 5). Applicant reported his prior security clearance hearing on his May 2013 clearance application (GE 1), as well as reporting the financial problems alleged at SOR 1.c-1.f. He reported the delinquent debt at SOR 1.g in his March 2014 response to DOHA interrogatories (GE 2). During two subject interviews in July 2013 (GE 2), Applicant disclosed that he had experienced financial hardship over the last six or seven years, because his wife works on commission and they were dealing with their ailing elderly parents. His adult son and his spouse had moved into Applicant's home, resulting in additional financial pressure between 2011 and 2013 (Tr. 46). He discussed SOR debts 1.c-1.i. He also discussed his 2009 clearance hearing, and the remaining unresolved debt from that hearing—the home-equity loan.

In February 2014, the creditor for SOR debt 1.c accepted Applicant's proposal to pay \$175 twice monthly to resolve an outstanding \$5,300 debt. The bi-monthly payments were to begin March 2014 (Answer, Attachment 1). Applicant documented the first March 2014 payment in his response to DOHA interrogatories. Applicant and his wife both testified that the monthly payments were \$350 (Tr. 57, 95). However, Applicant's documents suggest that the \$175 payment was a monthly, not bi-monthly, figure, or was at least not made on a regular basis. Under the terms of the agreement, Applicant should have made 28 payments from March 2014 through April 2015. However, an April 2015 letter from the creditor (AE F) reports that Applicant has paid \$2,975 through April—or 17 \$175 payments. Applicant's current balance is about \$2,370.

In September 2014, Applicant began making catch-up payments on his delinquent mortgage (SOR 1.d). He made monthly payments of \$2,900 from September through December 2014, \$3,000 in January 2015, \$2,850 in February 2015, \$2,900 in March 2015, and \$1,200 in April 2015. Applicant claims that he is no longer in arrears on his mortgage.

AE C and H reflect Applicant's payment records for his 2006 and 2007 Federal income tax returns. The current delinquent balances are essentially as alleged in SOR 1.e and 1.f. The payment records reflect that the expected monthly payment has been reduced to \$250-300 over time because Applicant was unable to make the payments as required. The payment records also reflect that Applicant has had gaps in his payments, some for significant periods of time. Applicant's wife confirmed that the payments have not always been consistent (Tr. 100).

In December 2014, Applicant agreed to pay the creditor for SOR debt 1.g \$100 monthly on a \$576 debt, beginning in January 2015. Although Applicant should have made the payments from January 2015 through April 2015, he did not produce any evidence at hearing that the payments had been made.

Applicant's coworker, who testified for him at his 2009 hearing (GE 2), considers him honest and trustworthy (AE B). He provided no other work or character references, or evidence of community involvement. He has received no credit or financial counseling.

His March 2014 personal financial statement (GE 2) shows \$655 positive monthly cash flow. He also has \$4,000 set aside to settle his debts (Tr. 62). He promises to pay his delinquent debts, but acknowledges that he has made that promise before without following through (Tr. 70-71).

### **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>8</sup>

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<sup>8</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. Applicant has had significant financial problems since before his March 2009 clearance hearing, and has continued to have them since.<sup>9</sup> Without suggesting that Applicant and his wife deliberately mislead the Administrative Judge about their future financial prospects, the fact remains that the Administrative Judge concluded that Applicant was well on his way to resolving his financial problems. However, Applicant did not resolve all the financial problems from that hearing, and acquired new financial problems in the ensuing years. He attributes those financial problems to the same issues he cited in his 2009 hearing: caring for family members (including those who had died before his 2009 hearing) and his wife's inconsistent income flow.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent, not infrequent, and ongoing.<sup>10</sup> While the circumstances that caused the indebtedness that was addressed in the 2009 hearing were beyond his control, he cited those same factors as the reason his finances remained problematic after his clearance was granted, including acquiring new debt after the hearing and letting those accounts fall delinquent. He cannot be considered to have acted responsibly in addressing his debts under the circumstances, because the debts have lingered for many years with incomplete resolution or inconsistent efforts toward resolution.<sup>11</sup> Further, Applicant's most recent spurt of activity seems to be driven by his subject interview in February 2014 (GE 2), and while the actions he took may constitute a good-faith effort to resolve his debts initially, his inability to follow through on making the required payments on a regular basis undermine those efforts.<sup>12</sup>

The concern with Applicant is that while he now promises to address his delinquent debts, he made that same promise to the Administrative Judge in 2009 without completely following through. Moreover, more than 10 years have passed since his wife moved to a job that pays only commissions, yet Applicant and his wife have not presented a budget or plan that accounts for the vagaries in her income while resolving their debts. The Government is not the collection agent of last resort. The Government expects applicants to deal with their delinquent debts because of their legal and moral obligation to do so, not because they face the risk of adverse administrative action. He has established no meaningful timetable for their resolution. He has not received credit or financial counseling. He certainly has not demonstrated that these delinquent debts

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<sup>9</sup>¶19(a) inability or unwillingness to satisfy debts; © a history of not meeting financial obligations;

<sup>10</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . . ;

<sup>11</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>12</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

are being resolved in an expeditious manner.<sup>13</sup> Further, he has only one favorable character and work reference to establish a “whole-person” analysis supporting a favorable clearance action, inadequate under the circumstances to overcome the security concerns raised by his delinquent debts. I conclude Guideline F against Applicant.

**Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a, c-g:	Against Applicant
Subparagraphs b, h-i:	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

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<sup>13</sup> 20120© 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;