



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



In the matter of:	)	
	)	
XXXXXXXX, Xxxxx Xxxxxx, Xxx	)	ISCR Case No. 14-05728
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin Dorsey, Esquire, Department Counsel  
Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: *Pro se*

07/21/2015

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 15 January 2015, 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 11 May 2015, and I convened a hearing 23 June 2015. DOHA received the transcript (Tr.) 1 July 2015.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, and Applicant exhibits (AE) A-C.

<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. He is a 38-year-old designer employed by a defense contractor since October 2013. He has not previously held a clearance.

The SOR alleges, Government exhibits (GE 1-2) establish, and Applicant admits, five delinquent debts totaling over \$54,000. The debts consist of four delinquent consumer credit accounts and a now-\$31,000 private education loan. Applicant filed for Chapter 7 bankruptcy protection in November 2014 (AE A). These five debts, among others, were discharged in April 2015 (AE B). Applicant reported these debts on his June 2014 clearance application (GE 1).

From February 2002 to June 2012, Applicant served as creative director for a company he and others had founded. About 2009 or 2010, the company experienced financial problems. Finding new capital required a reorganization of the company that left Applicant as a mere employee (as an independent contractor) of the company, although he retained \$5,000 in company stock (AE A).

Company prospects did not improve (at least regarding Applicant's affiliation with the firm), and he was laid off in June 2012. During the time leading up to his layoff, Applicant's income diminished, and he used the credit accounts at SOR 1.a-1.d for routine household expenses.

After Applicant's layoff, he decided that a career change was in order. He moved his family to another state and enrolled in an animation and visual effects school, borrowing money from a private lender to cover his school costs. He obtained a diploma in digital animation and visual effects in June 2013; by the time of his Chapter 7 bankruptcy filing, the amount owed to the lender had grown to almost \$31,000.

Applicant was not employed while he was attending school, and his wife was also in school at the time. They used whatever credit remained on his credit accounts for living expenses. Applicant remained unemployed until October 2013.

When Applicant became employed in October 2013, he apparently did not spend any time attempting to communicate with his creditors about resolving his delinquent debt. After he completed his clearance application in June 2014, he decided it would be better for him to resolve his debts through bankruptcy.

Applicant makes about \$80,000 annually as of March 2015; his wife's income is in the \$20,000 annually range. Applicant provided no work or character references or evidence of community and civic contributions. He has received no credit or financial counseling, beyond what was required during the bankruptcy process. He provided no budget to show how they will be able to avoid financial problems in the future.

## 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).<sup>3</sup>

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>3</sup>

## Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant voluntarily incurred over \$54,000 delinquent debt and has only recently resolved through bankruptcy.<sup>4</sup> Further, more than half of that delinquent debt was for a diploma program that he undertook while he was unemployed and his wife was herself attending school. Moreover, Applicant appears to have undertaken little, if any, effort to resolve his debts before resorting to bankruptcy protection.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent, not infrequent, and capable of repetition.<sup>5</sup> The circumstances that he cites as the cause of his indebtedness are only

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

<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 . . . ;

partly demonstrated to be beyond his control. He cannot be considered to have acted responsibly in addressing his debts under the circumstances, because he took no action to resolve his debts before resorting to bankruptcy.<sup>6</sup> Further, taking out \$31,000 in private education loans while unemployed, making no effort to repay them once re-employed, and having them discharged in bankruptcy because they were private loans and not Government-insured, does not constitute a good-faith effort to resolve debts.<sup>7</sup>

The concern with Applicant is that while his debts have been resolved through bankruptcy, he has not reestablished a track record of living within his means. 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 not received credit or financial counseling other than that required by the bankruptcy filing. While the immediate debts have been resolved, they have been resolved in a way that leaves open the question of whether his finances are under control.<sup>8</sup> Further, he provided no favorable character and work references to establish a “whole-person” analysis supporting a favorable clearance action. Accordingly, I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-e:	Against 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>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 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

<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;