



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-06977
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

March 31, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 5 November 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.<sup>1</sup> Applicant answered the SOR 19 November 2007, and requested a hearing. DOHA assigned the case to me 26 December 2007, and I convened a hearing 5 February 2008. DOHA received the transcript (Tr.) 13 February 2008.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations except for SOR 1.d.—a debt he claimed to have paid in Summer 2006. Accordingly, I incorporate his admissions as findings of fact. He is a 59-year-old systems and software engineer employed by a defense contractor since April 2006. He seeks to retain the security clearance he has held since 1973.

The SOR alleges, and government exhibits confirm, six delinquent debts totaling over \$16,000. Applicant admits five of the six, asserting without corroboration that he paid the \$665 debt at SOR 1.d. in summer 2006. Applicant's answer asserts, again without corroboration that he paid two debts totaling \$359 (SOR 1.b. and 1.f) in November 2007, after receiving the SOR. Applicant claims that he has been unable to identify the creditor for the debt at SOR 1.a. (\$122), although he is willing and able to pay. However, he has not made any payment for the two principal debts (SOR 1.c. and 1.e.), which have now grown to nearly \$17,000 (G.E. 5). He has made no contact with the creditor at 1.c.. He claims, without corroboration, to have contacted the creditor at 1.e., but the creditor has told him to not worry about repayment. In addition, Applicant owes \$2,000 to his aunt for a personal loan, and is \$5000-6000 in arrears in child support payments to his second wife, from whom he is separated.

Applicant ascribes his financial difficulties to a plethora of reasons: child support and college tuition expenses from his divorce from his first wife in May 1978, child support and college tuition expenses from his separation from his second wife in June 2002, brief periods of unemployment (June-August 2002, May-June 2004, December 2005-April 2006, and sometime in 2007), a longer period of underemployment (August 2002-August 2003), a cancer diagnosis in September 2006 that resulted in surgery, and unanticipated automobile repairs (A.E. G, H).

Yet, despite these setbacks, Applicant's tax records (A.E. E) reflect that he earned over \$87,000 in 2006 (including over \$11,000 unemployment compensation) and over \$76,000 in 2007 (including over \$8,000 unemployment compensation). He has not sought credit counseling, because of the perceived cost. He and his wife remain married because they are not able to afford the legal expenses of divorce proceedings.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the

grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, 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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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>2</sup>

### Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Setting aside for the moment four small debts each less than \$700, three of which Applicant claims to have paid, government records reflect nearly \$17,000 of delinquent debt that remain unaddressed, and which continue to grow.<sup>3</sup> Applicant makes a fair case that these financial problems are due to circumstances beyond his control. Yet, taken at face value, the financial circumstances cover more than 20 years even if most of the incidents seem to be since 2002. Further, his finances for the last two years appear much improved, but he failed to address the delinquent debts until faced with the security concerns raised by the government.

Applicant meets only one of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.<sup>4</sup> While the debts were due to circumstances beyond his control, he has not acted responsibly in addressing his

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

<sup>4</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

debts.<sup>5</sup> There is no evidence that he has sought credit counseling or otherwise brought the problem under control.<sup>6</sup> Although he may have paid some outstanding debts after the SOR was issued, and just before the hearing, the timing of the payments does not constitute a good-faith effort to satisfy his debts.<sup>7</sup> Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

### **Formal Findings**

#### **Paragraph 1. Guideline F: AGAINST APPLICANT**

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	Against Applicant

### **Conclusion**

In light of all 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>5</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>6</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>7</sup>¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.