



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
	)	ISCR Case No. 07-10256
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
*Pro se*

March 31, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 9 November 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J and F.<sup>1</sup> Applicant answered the SOR 19 by an undated letter received by DOHA 11 December 2007, and requested a hearing. DOHA assigned the case to me 10 January 2008, and I convened a hearing 6 February 2008. DOHA received the transcript (Tr.) 19 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 Guideline J SOR allegation. Accordingly, I incorporate his admission as fact. He denied the Guideline F allegations.<sup>2</sup> He is a 45-year-old chief financial officer (CFO) employed by a defense contractor since January 2007. He has not previously held a clearance. He has been married over 20 years and has six children.

For about two years before May 2005, Applicant misappropriated approximately \$8,500 from the cash accounts of his employer, a small, private, Christian college. He was able to accomplish this misappropriation—mostly money from campus vending machines—because of his position as vice president for administration and chief financial officer, a position he had reached after more than 20 years at the college. Applicant used the money to supplement the per diem of the college's traveling teams' members, both athletic and academic, to provide short-term loans to low income employees of the college, and—occasionally—to buy himself fast-food meals on nights he was working late. In the past, he had supplemented the per diem and made loans out of his own pocket. Sometimes the loans were paid, sometimes not. Aside from the occasional fast-meal, he never used the money for personal gain.

Applicant attributed his misappropriations to the stresses of dealing with the tight finances of the college, dealing with the tight finances of the city where he then served as a city council member, and the debilitating final illness of his mother. He also admitted his sense of entitlement/self-pity born of a lifetime of commitment to the college and his frustration over what he considered some poor financial and personnel decisions of the college president. Notwithstanding his motivations, he categorically insisted that these did not justify his conduct.

In May 2005, Applicant went to the college president and advised him of the misappropriated funds. He was largely motivated to confess by his guilty conscience, but also by his knowledge that new auditors would uncover the cash shortages. Applicant had been pressing the college for five years to replace auditors he considered sloppy and incompetent, and had finally succeeded in getting the college to hire his recommended auditors. Applicant made restitution to the college, and resigned. The governing body of the college voted to take no civil or criminal action against Applicant.

In June 2005, Applicant went to work as a consultant on an auditing project (G.E. 1). He told the certified public accountant (CPA) who hired him about his misconduct during his interview for the job. Nevertheless, she trusted him with access to company proprietary information and now recommends him for access to classified information. She considers his misconduct a one-time lapse (A.E. B). She recommended him to her sister and brother-in-law when the company they own (Applicant's current employer) needed a CFO, knowing that the company handled classified contracts.

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<sup>2</sup>Although Applicant's credit report (G.E. 2) reflects the two alleged debts, Applicant's evidence indicates that the debts at SOR 2.a. (A.E. B) and SOR 2.b. (A.E. C) were posted to the credit report in error.

Similarly, the college president (and former vice president for academic affairs) who accepted Applicant's resignation has known Applicant since 1984, considers the circumstances leading to his resignation as isolated and aberrant, and specifically vouches for his trustworthiness (A.E. B). Applicant's pastor (and the man who hired him as the college business manager in 1984), trusted him with the college's finances and with leadership responsibilities in the church, also considers Applicant's misconduct out of character and would trust him with classified information (A.E. B). Other long-term associates from the college, including the former athletic director, director of facilities, as well as co-workers, subordinates, and supervisors (in some capacities), voice the same opinion of his trustworthiness.

Applicant's family is aware of his misconduct. His three older children know why he had to leave the college; his three minor children know only that he had to leave. His testimony at hearing was credible, and his remorse for his misconduct evident. He was offered a position of financial responsibility in his new church, which he discretely declined with his pastor (who he told of his past issues).

### **Policies**

The RAG are 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 guidelines are Guideline J (Criminal Conduct) and 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>3</sup>

### **Analysis**

The government established a case for disqualification under Guideline J by establishing Applicant’s two-year course of misconduct resulting in his resignation from his employer of over 20 years.<sup>4</sup> However, Applicant mitigated the security concerns. While the misconduct cannot be considered distant in time, the circumstances of the misconduct were unusual, and the misconduct itself completely out of Applicant’s character. Further, there has been no recurrence of the misconduct, Applicant made restitution, and his rehabilitation is well documented.<sup>5</sup> Tellingly, his most important associates from the college vouch for his trustworthiness notwithstanding his misconduct, and a former employer recommended him to family for his current position. I consider it extremely unlikely Applicant would ever engage in this misconduct again. I resolve Guideline J for Applicant.

The government failed to establish a case for disqualification under Guideline F. Applicant’s evidence from the alleged creditors demonstrates that the debts were improperly entered on to his credit reports. I resolve Guideline F for Applicant.

A whole person analysis leads to the same result. For a brief period of time when he was under unusual stress, he breached his fiduciary duty to his employer. He offers no justification for his conduct, but made restitution and resigned. For more than 20 years before the misconduct and for more than three years after his resignation, he has demonstrated his reliability and trustworthiness to his past and current employers.

### **Formal Findings**

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph a: For Applicant

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

<sup>4</sup>¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

<sup>5</sup>¶32.(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; (b) the person was pressured . . . into committing the act and those pressures are no longer present in the person’s life; (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence or criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement;

Paragraph 2. Guideline F: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

**Conclusion**

In light of all 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