



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-11076
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: Leslie J. McAdoo-Gordon, Esquire

September 30, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 28 October 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E.<sup>1</sup> Applicant answered the SOR by undated answer, requesting a hearing. DOHA assigned the case to me 20 December 2007, and I convened a hearing 30 January 2008. DOHA received the transcript (Tr.) 7 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 financial allegations of paragraph 1, except for SOR 1.f. and SOR 1.k. She denied falsifying her clearance application. She is a 51-year-old help desk manager employed by a defense contractor since February 2006. She seeks to regain the security clearance she held on an interim basis until the SOR was issued.

When Applicant applied for a security clearance in October 2005 (G.E. 1), she answered “no” to a series of questions [27.a.–d. (financial record); 28.a.–b. (financial delinquencies)], representing that she did not have any history of financial difficulties. In fact, she had 10 delinquent accounts that had been delinquent for some period of time. Applicant claimed she had no intent to mislead the government. She stated that she thought that because she had entered into repayment agreements she could consider the accounts current. However, she also acknowledged that she had delinquent debts back in 2004, when she and her husband separated. They ultimately divorced.

The SOR alleges, and government exhibits confirm, 11 delinquent debts totaling nearly \$37,000. All the accounts on Applicant’s credit reports are listed as her individual debt, although their separation agreement (which is not binding on the creditor) requires him to pay three debts alleged in the SOR. The largest single debt, over \$16,000, has been assumed by Applicant’s sister. Applicant will be able to repay her sister when she and her ex-husband sell the two properties they own jointly, something they have not been able to do to date. Applicant’s evidence further reveals that the remaining debts have either been paid, or are the subject of repayment plans that are current. Some of the debts were settled for less than their full value.

Applicant attributes her financial problems to her separation and divorce from her husband of nearly 20 years. However, according to Applicant, they were pending separation from 1997 until he actually moved out in January 2004. She described her husband as someone who would not always pay his share of expenses. In addition, he was unemployed from January 2004 to January 2006, and thus not contributing to the family finances. Applicant insisted that she kept up with the family finances until January 2004, then experienced financial problems through 2005.

During the period of financial problems, Applicant borrowed from family and friends to meet everyday expenses. She described opening credit card accounts to pay current expenses, then opening other credit card accounts to pay off the older credit cards. She hired a credit repair law firm, and has seen improvement in her credit scores. She has also worked with her company facility security officer to organize her finances. It does not appear that she has received any formal credit or budget counseling.

Applicant has favorable employment and character references. Her company would hire her back if she obtains her clearance.

## 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 guidelines are Guidelines F (Financial Considerations) and Guideline E (Personal Conduct).

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. Although Applicant has paid, or is paying, all the debts alleged in the SOR, it is simply too early to say whether or not she will be ultimately successful keeping her finances stable.<sup>3</sup> Even her current success relies on her sister assuming the largest debt alleged in the SOR.

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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;

The mitigating factors for financial considerations provide Applicant mixed relief. Her financial difficulties are both recent and multiple.<sup>4</sup> The debts were largely due to circumstances beyond her control if examined from her actual separation from her husband in January 2004, but not if examined from 1997, when they began having marital issues. She certainly did not act responsibly during the course of her financial problems, opening serial accounts. She has certainly been more responsible in addressing her debts more recently.<sup>5</sup> There is no evidence that she has sought credit counseling or otherwise brought the problem under control.<sup>6</sup> The timing of current payments calls into question whether these payments constitute a good-faith effort to satisfy her debts.<sup>7</sup> In the best-case characterization of her current financial situation, Applicant appears to have stopped digging a financial hole, and may have crawled away from the hole a bit. What is not clear is whether she will be able to avoid falling back into the hole. I conclude Guideline F against Applicant.

The government also established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Given her recent financial situation I conclude she deliberately concealed her financial delinquencies from the government.<sup>8</sup> She acknowledges that she knew she had financial problems in the past, yet there is no indication anywhere on her clearance application that this was the case. Even if I accepted her claim that she had repayment plans on many of the debts, there were several debts that had no repayment plans, or that had only been paid recently.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose her financial difficulties until her subject interview.<sup>9</sup> Applicant's failure to disclose her adverse finances demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse

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<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 . . .

<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.

<sup>8</sup>¶ 16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

<sup>9</sup>¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

information about himself provides some indication of her willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests She is willing to put her personal needs ahead of legitimate government interests. I resolve Guideline E 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  
Subparagraph g: Against Applicant  
Subparagraph h: Against Applicant  
Subparagraph i: Against Applicant  
Subparagraph j: Against Applicant  
Subparagraph k: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: 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