



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-13394
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

January 8, 2009

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 5 August 2008, 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's undated answer arrived at DOHA 3 September 2008, and requested a hearing. DOHA assigned the case to me 2 October 2008, and I convened a hearing 30 October 2008.<sup>2</sup> DOHA received the transcript (Tr.) 6 November 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.

<sup>2</sup>Applicant previously agreed to the hearing date in a telephone conversation with Department Counsel more than 15 days before the hearing (Tr. 12-13).

## Findings of Fact

Applicant admitted the SOR allegations. She is a 39-year-old consultant employed by a defense contractor since May 2005. She has not previously held a clearance.

The SOR alleges, Applicant admits, and government exhibits substantiate, four delinquent debts to the Internal Revenue Service, for tax years 2000, 2002, 2004, and 2005, totaling over \$27,000. Applicant asserts, without corroboration that the debt at SOR 1.a. has been reduced to \$2,000. These are joint debts with her husband, from whom she separated in May 2008, and with whom there are no pending divorce proceedings.

Applicant attributes the initial debt in 2000 to her husband's failure to have adequate federal income tax withholding (FITW) for that tax year. However, she also failed to have adequate FITW for that year from her part-time job as a fitness instructor. The tax debts for 2002 and 2004, were also due to inadequate FITW. The 2005 tax debt was due to taxes and penalties on a pre-mature distribution from her 401K account—money that she and her husband used as a down payment on a home they bought. Applicant had tax refunds in tax years 2001, 2003, 2006, and 2007 that were seized by the IRS to reduce her tax debt. In January 2008, the latest record date in evidence, Applicant still owed over \$24,000. The 2000 tax debt had been reduced to just over \$4,000, but the 2002, 2004, and 2005 tax debts continue to grow through penalties and interest.

According to Applicant, she and her husband entered into a repayment plan with the IRS after the 2000 debt arose (and to which the other tax debts were added). The record does not clearly indicate when the initial plan was instituted. Record evidence (G.E. 5) reflects that the IRS filed a tax lien against Applicant and her husband in February 2007, and a formal repayment plan was established in late March 2007. Applicant claims that the first she knew he was not making the required payments was in July/August 2007, when the IRS garnished her wages to satisfy the lien. Applicant then assumed the payments. It appears that the IRS garnished \$1,000 per month for a couple of months. It also appears that Applicant got the monthly obligation reduced to \$500 per month in September 2007, so she could continue to make her mortgage payments. Applicant documented \$500 payments in November 2007, December 2007, and January 2008. She did not document any payments since January 2008.

After Applicant and her husband separated in May 2008, she remained in the marital home. He pays the utility bills, but does not contribute to the mortgage. The house is on the market to be sold. Applicant has considered cashing in more of her 401k to satisfy the IRS debt, but recent declines in the market leave the account value below the current IRS balance.

## 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>3</sup>

## Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has a history of financial difficulties dating to at least 2000.<sup>4</sup> Although her husband bears some responsibility for the tax debts through his failure to have adequate FITW, Applicant also failed to have adequate FITW in her part-time job. That, along with their apparent joint decision to cash out some of their 401k plans to make a down-payment on a house, suggests that if they were not living beyond their means, they were living very close to that line.

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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;

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are both recent and multiple.<sup>5</sup> The problems are not largely due to circumstances beyond her control, and her response has been mixed.<sup>6</sup> She has not documented continued payment after January 2008, and annual seizure of her tax refund by the IRS hardly constitutes a repayment plan. Further, her current financial situation is fairly characterized as being in flux. She and her husband have recently separated. There are no divorce proceedings pending, nor is there any movement toward a property settlement. The husband appears to not be paying his fair share of continuing household expenses. There is no evidence that Applicant has undertaken financial counseling. She has not demonstrated that the problem has been brought substantially under control.<sup>7</sup> The payments that have been paid have not been paid in a timely, good-faith effort.<sup>8</sup> The record does not indicate when, if ever, her financial situation will be settled enough for her to make clear progress on her tax debt. 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

### **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 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<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.(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>8</sup>,¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.