



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



In the matter of:	)	
	)	
XXXX, XXXXXXXX XXXXXXXX	)	ISCR Case No. 07-16664
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

September 30, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 28 April 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 answered the SOR 15 May 2008, and requested a hearing. DOHA assigned the case to me 11 August 2008, and I convened a hearing 28 August 2008. DOHA received the transcript (Tr.) 11 September 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.a. She is a 36-year-old secretary employed by a defense contractor since January 2007. She previously held a clearance 1997-2001.

The SOR alleges, and government exhibits substantiate, seven delinquent debts totaling over \$21,000. Applicant admits all but one debt for \$178, paid 10 days before the SOR was issued. Applicant attributes her financial problems to her June 2008 divorce and unemployment from September 2004 to December 2005. The record provides insufficient support for her assertions, demonstrating too, that Applicant had financial problems before those events.

Applicant's clearance application (G.E. 1) reflects that Applicant was continuously employed from at least September 1997 to September 2004, before voluntarily resigning her government job. She states, without corroboration of the circumstances or the reasons those circumstances required her to resign, that she resigned because her mother was ill and she had a high risk pregnancy. Her child was born in mid-August 2005, more than a year after she resigned her job. She returned to work in December 2005, and has been continuously, if sometimes under-employed since.

Applicant failed to withhold sufficient federal income tax from her salary in 2001, and was assessed interest and penalties on top of the shortfall. However, she failed to adjust her withholding the following year, and again owed taxes, interest, and penalties. Applicant claims, without corroboration, that she entered into a repayment agreement with the Internal Revenue Service (IRS) and began paying her delinquent taxes. There is no evidence to indicate whether or not this was in response to an IRS lien. She stopped these payments in 2004 when she resigned her government job. In the meantime, Applicant failed to withhold sufficient income tax in 2003 and 2004, and the IRS filed a \$9,000 income tax lien against her in June 2005 for tax years 2001, 2002, 2003, and 2004. According to Applicant, she also owes back taxes for 2007, which she has included in her offer-in-compromise to the IRS (A.E. D).

Applicant claims, again without corroboration, to have restarted payments to the IRS after she regained employment in December 2005, claiming that she set up a direct payment through her company. However, when she changed jobs, the automatic payment stopped, and she did not restart it with her new employer. She states, without corroboration, that she entered into a new payment schedule with the IRS in January 2008, and made five payments before being temporarily laid off because of her lack of a clearance.

Applicant's payment history with her educational loans (dating back to 1994 when she graduated from college) follows a similar arc to her IRS payments, except that she has been making payments since February 2008 (A.E. B). Her payment history shows that her total debt had increased to over \$20,000. Her account is listed as current,

although she is considered to be in rehabilitation status with the loan authority. Her current balance is \$19,500.

Applicant married in January 2006, separated from her husband in June 2008, and was divorced in June 2008. She provided no evidence how her divorce affected her finances.

Applicant claimed, without much credibility, that she was unaware of her past due debts until she was confronted with them during subject interviews in August and September 2007. She moved a couple of times, but did not provide her creditors with her new addresses. Applicant provided evidence that she reached settlements with the creditors at SOR 1.e. (for 60% of the debt) and 1.f. (for 15% of the debt) after the SOR was issued, and paid those creditors. She provided proof of payment for the debts at SOR 1.c. and 1.d. during the same time frame.

Applicant currently lives with her mother. She has provided no work or character references. She has not received financial counseling; nor has she demonstrated that she has a budget.

### **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. The short summary is that government records, and Applicant’s own documents, establish her accumulated indebtedness over several years.<sup>3</sup> She failed to corroborate her claimed reasons for the indebtedness. Applicant’s unemployment certainly contributed to her financial difficulties, as did no doubt and her separation and divorce. But Applicant was having financial problems before any of these events occurred. She had tax problems with the IRS before she resigned her government job or got married, and the fact that she was able to make payments on an agreed plan with the IRS, does not obscure the fact that she both under withheld federal tax for several years (and failed to correct that issue), and apparently lacked the resources to pay the delinquent taxes without entering into a repayment plan. Even if I accepted Applicant’s characterization that the debts were due to circumstances beyond her control, Applicant had the burden to demonstrate that she had taken responsible action to address the debts. She has not done so. Only the debt at SOR 1.a. appears to have been paid as a result of her subject interviews in 2007. The remainder were addressed (to the extent they were addressed) in the wake of the SOR.

The mitigating factors for financial considerations provide mixed help to Applicant. Her financial difficulties are both recent and multiple.<sup>4</sup> Her evidence is insufficient to clearly establish that her financial problems were largely due to circumstances beyond her control. Nor can it be said that she has acted responsibly overall in addressing her debts, having taken action mostly after the SOR was issued.<sup>5</sup> She has not demonstrated that the problem has been brought substantially under control.<sup>6</sup> She did not produce a budget showing that she lives within her means. Part of the resolution of her financial problems relies on her obtaining relief from the IRS through her offer in compromise, by no means a sure thing, and in any event not a mitigating condition for financial concerns. She cannot be said to have paid her debts in

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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;

<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;

a timely, good-faith effort.<sup>7</sup> It is not even clear that she now has the means to get and keep her financial house in order. Nevertheless, the best case view of Applicant's circumstances is that it is still too early to tell whether her goal of financial stability will be achieved. I conclude Guideline F against Applicant.

### **Formal Findings**

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

Subparagraph a: For 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

### **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>7</sup>, ¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.