



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



In the matter of:	)	
	)	
XXXXXX, XXXXXXXX XXXXX	)	ISCR Case No. 07-18513
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kathryn D. MacKinnon, Esquire  
Deputy Chief Department Counsel  
For Applicant: Raeka Safai, Esquire

July 31, 2009

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 8 October 2008, 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 21 November 2008, requesting a hearing. DOHA assigned the case to me 3 February 2009, and I convened a hearing 24 March 2009. DOHA received the transcript (Tr.) 31 March 2009.

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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 SOR 1.a., 1.g., 1.h., 1.i., 1.j., 1.k., 1.q., and 1.r., and the personal conduct allegations of 2.b., 2.c., and 2.j. He denied the remaining SOR allegations. He is a 42-year-old operations manager employed by a defense contractor since January 2007. He seeks to retain the security clearance he has held as needed since at least 2001.

The SOR alleges, and government exhibits confirm, 17 delinquent debts<sup>2</sup> totaling just over \$49,000. Applicant admitted seven debts totaling over \$23,000. He also admitted being involved in bankruptcy proceedings between June 1992 and June 1993, when he received a complete chapter 7 discharge of his dischargeable debts.

Despite his bankruptcy discharge in June 1993, Applicant has continued to have financial problems. He attributes these problems to periods of unemployment, underemployment, and his wife's unemployment. Additionally, he has been divorced twice and the financial pressures of that process and the concomitant child support orders have inhibited his ability to stay current on his accounts. When he married for the third time in November 2005, both he and his wife brought delinquent debt to the marriage.

Applicant has been employed, at varying levels of authority, as a security guard for many years. He generally works two jobs in order to earn sufficient income to support his family. Security work is a profession that frequently involves high turnover rates among personnel, wages that generally require an individual to work two or more jobs to make ends meet, cycles of layoffs when the employer loses the government contract that employs it, and regular rehiring of former employees—regardless of the reason the employee left the company.

Over the years, Applicant has been subject to the vicissitudes of his profession. On four occasions, he has been fired or removed from the agency work site because of recorded misconduct: September 2000 (removed), October 2002 (fired), March 2004 (fired), and April 2007 (fired). In each of these instances, Applicant has a version of events that conflicts with the employers' version, but does not dispute that the adverse action was taken by the employer. And while Applicant denies or minimizes the specific incident that precipitated each adverse action, the record evidence reflects that each adverse action was based in part on other misconduct documented by the employer.<sup>3</sup>

When Applicant completed a public trust questionnaire in November 2005 and March 2006 (GE 2), he failed to disclose the adverse employment actions in September

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<sup>2</sup>Record evidence suggests that SOR 1.c. and 1.h. are the same debt. Accordingly, I find 1.h. for Applicant to avoid duplication of findings.

<sup>3</sup>Indeed, one of the witnesses Applicant called to document the circumstances of the incident that precipitated his firing was also the reporting officer on some of the documented misconduct that supported his firing.

2000, October 2002, and March 2004. He also failed to disclose numerous delinquent debts. When Applicant applied for a security clearance in October 2005 (GE 1), he concealed the same information. Although he denied any intent to mislead the government, he admitted that he knew he was fired from several positions and that he was required to disclose that fact (Tr. 258-260).

Regarding the October 2005 clearance application, he also claimed to rely on the advice of his facility security officer who allegedly told him to answer “no” to the pertinent questions (because a “yes” answer required explanation and Applicant did not have the details immediately available to him) and explain it during the later subject interview. However, he also admitted that this was not the first time he had applied for a clearance, and he knew he was required to give truthful answers to the questions. In addition to his failure to disclose adverse information on his public trust and clearance documents, Applicant also failed to provide releases required to facilitate his background investigation between June-August 2006. He explained that he did not mean to be uncooperative, but was consumed by the press of other business.

At hearing, Applicant provided evidence that he had been making regular payments on the child support obligations at SOR 1.e. and 1.q. He was not making payments on the large judgment against him in SOR 1.a. The remainder of his debts he was addressing through a credit firm he began working with in December 2007. Although the program includes some counseling and education on developing good financial habits, including a budget, the firm advertises itself as a credit repair operation.

On the advice of the program representative, he has been advised to make no payments on any of his delinquent accounts—not because the debts are not his or he does not owe the money, but because the program seeks to have the accounts removed from Applicant’s credit reports based on the time the accounts have been inactive. In this fashion, Applicant has succeeded in removing some accounts that he claims are not his and a number of accounts that he acknowledges owing. Some accounts have not had responses from the credit agency.

Once he has had as many accounts removed from his credit report as he can, he will make arrangements to repay the remaining creditors. Several of the accounts that no longer appear on his credit report are accounts that the credit reporting agencies confirmed as valid debts in Applicant’s name. However, Applicant confirmed that a current credit report would show new delinquencies not alleged in the SOR, at least one of which is a default on an instant loan Applicant obtained to deal with short-term cash flow issues (Tr. 278).

Applicants witnesses consider him a reliable and trustworthy individual who should have his clearance. Similarly, his work and character references (AE M) recommend him for his clearance. However, it does not appear that any of them are aware of the issues in this case.

## 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 commonsense 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>4</sup>

## Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Although Applicant obtained a complete discharge of his dischargeable debt in June 1993, he has been unable to get, and keep, his financial house in order.<sup>5</sup> To some extent, this has been due to circumstances beyond his control with his divorces and periods of unemployment, underemployment, and his wife's unemployment. However, to the extent that his periods of unemployment or underemployment were due to adverse employment actions occasioned by his misconduct, his financial problems were not due to

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</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;

circumstances beyond his control. Further, there is one major debt (SOR 1.a.) that Applicant acknowledges but has not addressed in any fashion. In addition, he continues to acquire new delinquent debt. Finally, although the credit repair program Applicant entered may be lawful, it is not responsible. It remains to be seen what debts are eventually removed from his credit reports and what debts will be repaid, it is incomplete. Unlike an established repayment plan, or a plan to address debts serially, there is no reasonable certainty that Applicant will resolve his delinquent debts, much less when that might be accomplished. This is a plan to avoid his debts, not resolve them.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.<sup>6</sup> The debts were not entirely due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.<sup>7</sup> The credit repair program he entered does not really involve credit counseling , and as he is still in the middle of that program he cannot be said to have otherwise brought the problem under control.<sup>8</sup> As he has not made any payments to his creditors, including the judgment creditor that falls outside his credit repair program, he has not made a good-faith effort to satisfy his debts.<sup>9</sup>

Further, given his selection of a program that is not designed to address his debts but only to avoid them, there is nothing in the record to suggest that Applicant will put his financial problems behind him. The government's documents adequately establish Applicant's responsibility for most of the debts in the SOR. Despite the denials in his answer, he had previously admitted and acknowledged at hearing, his legal responsibility for the debts. Thus, he had the burden to establish that he had resolved the debts or had a legitimate reason to dispute them. He did neither. I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicant's employment adventures raise serious security concerns. Distilled to its essence, Applicant's misconduct demonstrates a consistent pattern of poor judgment. He has been unable or unwilling to follow basic commonsense requirements in the workplace. Compounding these examples of poor judgment is his inability or unwillingness to see that these incidents demonstrate poor judgment—in itself a demonstration of poor judgment or poor

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<sup>6</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>7</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>8</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>9</sup>¶ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

perception.<sup>10</sup> In his mind, none of these incidents are really his fault, even partially. It may be that one or more of these incidents were due to petty jealousies or co-worker/supervisor incompetence. But when an individual is removed from a work site or fired four times in seven years, the credibility of such claims diminishes. Further, Applicant was over 34 years old when this misconduct began, hardly an age where the conduct might be attributed to youthful immaturity.

In addition to his adverse employment actions, the government also established a case for disqualification under Guideline E, because of his falsifications on trust position and clearance documents. He deliberately concealed his financial delinquencies and his adverse employment from the government.<sup>11</sup> He did so knowing that these issues were of security concern to the government. His claim that he relied on the advice of his FSO is not credible given that Applicant had previously completed similar documents and knew the requirement for full disclosure. Further, there is no evidence that Applicant revealed this adverse information before being confronted with it. Finally, he hindered his background investigation by failing to execute required releases in a timely fashion.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information until his subject interview.<sup>12</sup> Applicant's failure to disclose this information 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 information about himself provides some indication of his 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 he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

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<sup>10</sup>¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . . ;

<sup>11</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>12</sup>¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions (whole person) lead to the same result. Falsifications and finances are core security concerns [RAG ¶2(a)(1)]. His behavior was deliberate and not due to circumstances beyond his control [RAG ¶2(a)(2); RAG ¶2(a)(5)]. His misconduct was both recent and frequent [RAG ¶2(a)(3)]. Applicant is a mature adult and although his financial problems began when he was in his twenties, those problems persist and his falsifications and employment issues cannot be excused by claims of youthful immaturity [RAG ¶2(a)(4).)]. Rehabilitation or behavioral changes are difficult to measure under these circumstances [RAG ¶ 2(a)(6)]. He clearly sought to mislead the government about his financial and employment records, or was at least willing to benefit from his misconduct [RAG ¶2(a)(7)]. Applicant’s willingness to put his personal needs ahead of legitimate government interests increases his potential vulnerability and he has not demonstrated that the misconduct is unlikely to recur [RAG ¶ 2(a)(8); RAG ¶ 2(a)(9)]. The concern is whether Applicant would disclose situations or circumstances, whether deliberated or inadvertent, that raise security concerns and whether he will be able to exercise consistent control over his finances. Overall, the record evidence leaves substantial doubt about Applicant’s eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has not mitigated the security concerns arising from his falsifications and financial problems.

**Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a-d:	Against Applicant
Subparagraph e:	For Applicant
Subparagraph f-p	Against Applicant
Subparagraph q:	For Applicant
Subparagraph r.	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph a-j:	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