



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
XXXX, XXXXXXXX XXXXXXXXXX	)	ISCR Case No. 08-08440
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2009

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 26 January 2009, 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 24 March 2009, and requested a hearing. DOHA assigned the case to me 22 April 2009, and I convened a hearing 4 June 2009. DOHA received the transcript (Tr.) 10 June 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 SOR allegations except for SOR 1.I. He is a 41-year-old mail clerk employed by a defense contractor since September 2008. He previously held an unidentified clearance with another government agency in October 2006, when he was also employed as a mail clerk.

The SOR alleges, and government exhibits (G.E. 2, 4) confirm, 13 delinquent debts totaling over \$30,000. Applicant denies only one debt, for \$400. Applicant reported delinquent debts on his February 2008 clearance application (G.E. 1), and confirmed many of them during an interview with a government investigator in May 2008 (G.E. 3).

Applicant's financial difficulties are largely attributable to three lengthy periods of unemployment and chronic underemployment. He was unemployed from February 2001 to March 2003 because of an automobile accident in which he lost one arm. He was unemployed from January 2004 to June 2005. He was unemployed from November 2006 to September 2008. He was fired from his current employer because of a policy dispute with his supervisors. His dismissal was overturned on appeal, but the company offered him a new work location that was too far from his home, so he resigned. While he was unemployed, he survived on social security disability payments and financial support from his mother. He was later rehired by this company.

Some of the debts are for medical expenses that were not covered by insurance. He has a deficiency amount due on an automobile repossession, and delinquent a number of delinquent credit cards. Some of the debts are for delinquent rent that resulted in evictions from his homes. One of the evictions was reduced to judgment. Applicant's friend let him live in an apartment, conditioned on payment when Applicant received damages from a civil suit related to the automobile accident. When Applicant lost the suit, his friend evicted him and reduced the back rent to judgment.

Applicant's response to DOHA interrogatories (G.E. 3) documented that he contacted all of his creditors in March 2008, offering minimal monthly payments on each of his debts. Most of the creditors did not respond in writing. Several creditors have offered substantial discounts with a lump-sum payment by Applicant, but he lacks the funds to take advantage of those offers. Consequently, he has made no payments on any of his debts. However, he remains in periodic contact with his creditors and intends to repay his debts. He has a mandatory retirement account with his current employer, which makes matching contributions. There is currently about \$5000 in the account, and Applicant intends to apply for a hardship liquidation of the account to pay some of his debts when he is eligible to access the account in six months. He asks for a year to get his financial house in order.

## 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. Applicant's credit reports establish his indebtedness. He acknowledges most of the debts, and credibly states his intent to satisfy all his creditors. However, he lacks the means to start repayment plans or take advantage of the settlement offers made to him, and that circumstance is unlikely to change in the near future.<sup>3</sup>

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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; (c) a history of not meeting financial obligations; . . .

The mitigating factors for financial considerations offer Applicant little solace. His financial difficulties are both recent and multiple.<sup>4</sup> However, the debts were due to circumstances beyond his control and in some respects he has acted responsibly in addressing his debts within his means.<sup>5</sup> The problem for Applicant is that he has very little means at present, and appears unlikely to have any greater means in the near future. Further, there is no evidence that he has sought credit counseling or otherwise brought the problem under control.<sup>6</sup> None of the alleged debts have been paid, although this has nothing to do with timeliness or good-faith.<sup>7</sup> Still, with no plan in place to address his debts and no likelihood of a plan in the near future, I cannot conclude that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant. Consideration of the whole person factors yields no different result.

### **Formal Findings**

Paragraph 1. Guideline F:           AGAINST APPLICANT

Subparagraph a-m:           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>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.