



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



In the matter of:	)	
	)	
XXXXXXXX, Xxxxxx Xxxxxx, Xxx	)	ISCR Case No. 08-08663
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: John F. Mardula, Esquire

August 31, 2009

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 10 December 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 19 January 2009, requesting a hearing. DOHA assigned the case to me 17 February 2009, and I convened a hearing 19 March 2009. DOHA received the transcript (Tr.) 27 March 2009.

---

<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 denied the SOR allegations, except for 1.a., 1.f., and 1.g. He is a 45-year-old managing consultant employed by a defense contractor since March 2007. He has not previously held a clearance.

The SOR originally alleged, and government exhibits confirmed, eight delinquent debts totaling just nearly \$68,000. However, record evidence revealed that the debt at 1.b. was a duplicate of 1.h. and the debt at 1.e. was a duplicate of 1.f. Consequently, I find 1.e. and 1.h. for Applicant, and the resulting debt to be discussed is six debts totaling over \$43,000. Applicant initially admitted three debts totaling over \$12,000. He now admits four debts totaling nearly \$30,000. Except for his denial of 1.d.—which he claims is not his account—his initial denials were based on his disputing the amount owed, not disputing that he owed money to the listed creditor.

Applicant had no financial problems until he was laid off from his job in May 2002. He was one of the last employees hired by his company, and thus was one of the first let go when the company had a reduction in force. He was making about \$73,000 per year at the time. He remained unemployed until December 2005 when he moved to another state to obtain employment. His new job paid about \$85,000 per year. His current job pays about \$112,000 per year, plus an anticipated bonus.

Applicant's finances collapsed while he was unemployed. He sold his house, voluntarily surrendered his car, and was homeless for a few days until he moved in with his mother. He fell behind in his child support payments, incurred liens for back taxes, and fell delinquent on numerous credit accounts.

When he regained employment, Applicant first caught up with his child support payments. He then paid his back taxes. Finally, he paid his mother back for his share of housing expenses. He also began working with a credit counselor back in his home state. The counselor helped Applicant establish a budget and devise a plan for dealing with his delinquent debts. The first phase of the plan was for Applicant to pay creditors to whom he owed less than \$1,000. Record evidence shows that Applicant paid a number of such debts in early 2007, and Applicant's credit reports reflect an improving trend with his finances.

Except for the debt at 1.a., the debts alleged in the SOR are all over \$1,000. Record evidence shows Applicant paid the debt at 1.a. three days before the hearing (A.E. E). Applicant's plan for the remainder of the debts alleged in the SOR was to consolidate them into a single payment plan through his credit counselor. However, Applicant had some difficulty identifying the correct creditor or successor-in-interest on some accounts. He was also unwilling to establish a payment plan with a creditor until he could get a firm number on the balance owed. But because of interest charges, he discovered that the balance given to him in telephone conversations with the creditor was not the same balance listed when the creditor sent settlement proposals.

Consequently, at hearing, Applicant did not have a plan for addressing his remaining debts, but more like a plan for a plan.

Applicant's post-hearing submission (A.E. F) contains a current budget and a proposed repayment plan that would pay his acknowledged creditors in full by April 2011 (beginning in April 2009). The proposed repayment plan assumes both that the creditors will agree to the proposed monthly payment and that the creditors will waive further interest and fees. Applicant proffers that the proposed schedule is a conservative one; that he may be able to accelerate payments over the two years repayment period.

Applicant's character references, both of whom have known him many years, consider him honest and trustworthy and recommend him for his clearance. The record contains no work references.

### **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 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>

---

<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## Analysis

The government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. While Applicant documented significant efforts to rehabilitate his finances since regaining employment in December 2005, he still did not have a plan in place to address over \$30,000<sup>3</sup> in delinquent debt.<sup>4</sup> Without question, Applicant's significant period of unemployment caused his financial difficulties. But after several years of progress with his delinquent debts, he seems to have stalled without justification or credible explanation.

Applicant partially satisfies several of the mitigating factors for financial concerns, but not enough to overcome the negative inferences of those problems. His financial difficulties are both recent and multiple.<sup>5</sup> The debts were almost entirely due to circumstances beyond his control, and while he initially acted responsibly in addressing his debts, his follow through on his remaining debts has been inadequate.<sup>6</sup> Although, he sought credit counseling and made significant initial progress on his debts, too much remains unsettled to conclude he has brought the problem under control.<sup>7</sup> He has outlined a plan that would address the remaining debts in a reasonable period of time, but without agreement by the creditors, and an established track record of payments, it remains to be seen if Applicant will put his financial problems behind him. He has the means, but does he have the will. Put another way, there is nothing in Applicant's post-hearing submission that could not have been accomplished long before the SOR was issued. Further, the record reflects a good-faith effort to satisfy the debts that were not alleged in the SOR, but only belated efforts on the debts that were alleged.<sup>8</sup> I conclude Guideline F against Applicant.

## Formal Findings

### Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a-d:                      Against Applicant

---

<sup>3</sup>I have excluded the disputed debt at 1.d. from my analysis despite the fact that multiple credit reports show it to be Applicant's individual account and he has documented neither a potential basis for disputing the account nor success in getting it removed from his credit report.

<sup>4</sup>¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

<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.

Subparagraph e:	For Applicant
Subparagraph f-g:	Against Applicant
Subparagraph h:	For 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.

---

JOHN GRATTAN METZ, JR  
Administrative Judge