



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 ) ISCR Case No. 09-01167  
 SSN: )  
 )  
 Applicant for Security Clearance )

**Appearances**

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

April 28, 2010

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 28 October 2009 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations as the basis for a decision to deny or revoke his access to classified information.<sup>1</sup> Applicant answered the SOR 17 November 2009, and requested a hearing. DOHA assigned the case to me 4 January 2010, and I convened a hearing 8 March 2010.<sup>2</sup> DOHA received the transcript (Tr.) 16 March 2010.

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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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

<sup>2</sup>The hearing was initially scheduled for 10 February 2010, but was postponed because of a record snowstorm in the area.

## Findings of Fact

Applicant admitted the SOR allegations.<sup>3</sup> He is a 59-year-old program manager employed by a defense contractor since July 1999. He seeks to retain the clearance held when he was in the military, and which was most recently renewed in September 2003.

The SOR alleges, Applicant admits, and government exhibits substantiate, over \$54,000 in taxes, interest, and penalties owed to the Internal Revenue Service (IRS) for tax years 1998-2008. Despite Applicant's sporadic payments to the IRS over the years, the debt has grown to nearly \$56,000 as of February 2010. Applicant has not entered into a repayment plan with the IRS, and has no plan for addressing this indebtedness. The IRS offered him a repayment plan in July 2009 in which the IRS concluded that Applicant could afford monthly payments of \$1,690. Applicant believed he could not afford that payment. The IRS bases its calculations on Applicant's available income, which includes amounts Applicant is currently sending to his 401k retirement plan, his son's college tuition, and his tithe to his church. Applicant had proposed that the IRS accept monthly payments of \$350. Applicant discussed a repayment plan with the IRS in February 2010, but they are still far apart on the monthly payment. The IRS wants Applicant to pay \$1,621 per month; he has offered \$900 (Tr. 34).

In September 1997, Applicant retired as an O-6 after 25 years service with the military. In early 1996 or 1997, he and his wife separated, and ultimately divorced. Although Applicant had the property settlement reviewed by a military legal assistance attorney, he was unrepresented in the property settlement negotiations, and perceiving his wife to be "unstable" largely acquiesced to her and her attorney's demands. Chief among those demands were Applicant's assumption of most of the marital debt, payment of alimony and child support, and his agreement that she could claim the children as dependents on her income tax returns. Applicant agreed to these terms despite the fact that his wife did not, and does not, work outside the home.

Because of the property settlement, Applicant experienced financial difficulties. He got custody of his children in 2000, which helped him on his income taxes, but required him to spend more on housing. In 2003, he entered a debt consolidation program and paid \$700 per month for five years, finishing in November 2008. He has made sporadic payments to the IRS over the years, but has not satisfied his tax liability for any one year. It appears that the only tax year for which his balance has been reduced by payment is tax year 2008. All other tax years have increased balances because of interest and penalties.

Applicant's combined salary and military retirement total about \$182,000 per year (Tr. 50-51). He always files his federal income tax returns on time, but has been unable to pay the full amount due. The large tax liabilities in 1998 and 1998 were mostly due to

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<sup>3</sup>The SOR also alleged two debts totaling just over \$500, which Applicant has paid. They lack security significance in the context of this case.

the tax consequences of his separation and losing his children as deductions. He has not offered satisfactory explanations for his failure to withhold adequate income tax from 2000 to 2008, although in the later years he was subject to alternative minimum tax. He also took premature distributions from his 401k retirement plan to pay debts, which increased his tax liability for the year in which he made the withdrawal. He believes that he has adjusted his withholding enough so he will have a small refund due when he files his 2009 income tax return.

Applicant's supervisor since 2008 considers him a trustworthy employee and recommends him for his clearance. She is aware that his clearance is under review, but is not aware of the issues raised in the SOR.

### **Policies**

The adjudicative guidelines (AG) 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 AG ¶ 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 legally sufficient 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>

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<sup>4</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 mitigate the security concerns. Applicant has a history of financial difficulties dating to at least 1998 as demonstrated by outstanding income tax liabilities for tax years 1998 through 2008.<sup>5</sup> He has not made systematic payments to the IRS, has not reached a repayment agreement with the IRS, and has only recently adjusted his income tax withholding for tax year 2009 to ensure that enough tax is withheld.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are both recent and multiple.<sup>6</sup> His financial problems are as much a product of choices he made when he separated from his wife in 1996 or 1997 as the divorce itself.<sup>7</sup> Further, he did not deal responsibly with his tax debt. Indeed, his financial plan seems to have provided for repayment of every creditor but the IRS. His payments to the IRS have been haphazard and sporadic. He has declined the repayment plans offered by the IRS because, in his view, he cannot afford the payments because of other financial choices he has made. There is no evidence that Applicant has undertaken financial counseling. He has not demonstrated that the problem has been brought substantially under control.<sup>8</sup> The payments that have been paid have not been paid in a timely, good-faith effort.<sup>9</sup> The record does not indicate when, if ever, his financial situation will be settled enough for him to make clear progress on his tax debt. I conclude Guideline F against Applicant.

A whole-person analysis requires no different result. Although the record is silent on his military record, I take as a given that his performance was satisfactory, and there is no evidence of any security issues during his career. Similarly, his work performance is favorable. However, for the last 11 years, Applicant has demonstrated misplaced priorities by not addressing his income tax issues in a timely and effective manner. Even now, it is not certain that Applicant will have no tax issues for tax years 2009 and beyond. Further, it remains to be seen what steps Applicant will take to address his income tax liabilities for tax years 1998-2008. Finally, it is anomalous that Applicant would expect to be trusted with access to classified information by the same government whose tax assessments remain unsatisfied, and growing, for more than 10 years.

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<sup>5</sup>¶19 (a) inability or unwillingness to satisfy debts;

<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.

### **Formal Findings**

Paragraph 1. Guideline F:           AGAINST APPLICANT

Subparagraph a:                   Against Applicant

Subparagraph b-c:               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.

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JOHN GRATTAN METZ, JR  
Administrative Judge