



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-03336
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro se*

June 14, 2010

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 23 December 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.<sup>1</sup> On 2 February 2010, Applicant answered the SOR, and requested a hearing. DOHA assigned the case to me 7 March 2010, and I convened a hearing 31 March 2010. DOHA received the transcript (Tr.) 6 April 2010.

**Findings of Fact**

Applicant denied the SOR allegations, except for SOR 1.n., a \$8,200 delinquent educational loan. However, she now believes that she denied the allegations based on incorrect advice she received (Tr. 81-82). Her clearance application (GE 1) and answers

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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.

to two sets of interrogatories (GE 2, 3) contain her acknowledgments of the debts in the SOR. She is a 47-year-old prospective employee of a defense contractor who requires a clearance to begin work. She has never married, but has an adult daughter (age 28) and a minor daughter (age 12). She has not previously held a clearance, although it appears that she had a background investigation in October 2008.

The SOR alleges, and government exhibits substantiate, 20 delinquent debts attributable to Applicant, totaling over \$33,000.<sup>2</sup> Applicant admits one debt totaling nearly \$8,200. Of the remaining 18 debts, four are less than \$100 each and another eight are less than \$500 each.

Applicant paid the SOR 1.i. debt in January 2010 (AE C). Applicant has not entered into repayment plans with any of her other creditors and appears to lack the means of satisfying the bulk of her debts at this time. The education loan at SOR 1.n. has grown to at least \$10,000 (AE D), and is for loans she obtained 30 years ago. (Tr. 84). Applicant made a \$6 payment on the SOR 1.o. debt in March 2010 (AE E), and was offered the opportunity to discuss a settlement amount, but she was unable to take advantage of the offer. Similarly, in August 2009, the SOR 1.k creditor offered to settle the account for 50% of the amount due. Also in August 2009, the SOR 1.i. creditor offered to settle the account for 35% of the amount due (GE 3). Applicant has drafted a letter to 10 of her creditors (AE B) to attempt settlement of the delinquent debts, and intends to send them a good-faith payment (AE A). However, she has not stated when she will send the letters, and she has not stated what she considers to be a good-faith payment. Her post-hearing submission (AE H<sup>3</sup>) contains copies of dated letters to the SOR 1.g., 1.g. and 1.j. creditors. She recites making a token payment to each creditor, but neither the letter nor other documentation substantiates the amount of the payment. She claims without corroboration to have brought her mortgage current (SOR 1.m.). She also claims without corroboration to be disputing or investigating three accounts. One creditor (SOR 1.a.) seeks to reduce the debt to judgment. Applicant intends to pay the SOR 1.p. creditor immediately.

Applicant states that she had no financial problems until July 2005, when she was fired from her job. Although she also states that she did not deserve to be fired, she was denied unemployment compensation by the state unemployment commission and that denial was upheld at her unemployment compensation hearing. She has provided no corroboration of her claim that her termination for cause was unfounded. Applicant claims, again without corroboration, to have been in telephone contact with her creditors when her accounts first became delinquent, to explain her financial circumstances. Since she was fired, Applicant has been unemployed and underemployed, and been unable to keep current on the SOR debts. Nevertheless, she has not provided a

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<sup>2</sup>Record evidence indicates that the debt at SOR 1.i. and 1.s. are the same debt. Accordingly, I find SOR 1.i. for Applicant to avoid unnecessary multiplication of allegations.

<sup>3</sup>The last five pages of AE H are blank, and Applicant did not respond to Department Counsel's attempts to contact her. Consequently, I cannot determine what, if any, information Applicant intended to present.

convincing reason for her failure to pay the smallest of her delinquent debts. She has made a so-far-unsuccessful effort to establish an information technology consulting firm. Most of the debt to the SOR 1.i. creditor is for start up costs for her company.

Applicant's work and character references consider her reliable and trustworthy (AE G). However, none of them appears to be aware of her financial problems.

### **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 common sense 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>

### **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 2005.<sup>5</sup> Although she has contacted her creditors to inform them of her financial problems, she has not reached repayment agreements with any of

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

them, has been unable to take advantage of substantial discounts offered by two creditors, and currently lacks the means to devise any plan to address her financial problems.

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are both recent and multiple.<sup>6</sup> Strictly speaking, the problems are not largely due to circumstances beyond her control. Her firing for cause was not a circumstance beyond her control, and Applicant has not documented her efforts to find comparable employment. While the economic downturn may have effected the recent job market, there is no evidence that those circumstances were in effect in July 2005.

Even if I concluded that her firing was beyond her control and that she is willing to satisfy her delinquent debts but simply unable to pay any of them now, her response has been largely unsatisfactory.<sup>7</sup> She has not made contact with her creditors to explore resolution of her debts, including not being able to resolve the four debts that are under \$100 each. There is no evidence that Applicant has undertaken effective financial counseling. She has not demonstrated that the problem has been brought substantially under control.<sup>8</sup> Except for paying off the SOR 1.i. debt in January 2010 and a \$6 payment to the SOR 1.o. creditor, she has not made any payments to her creditors.<sup>9</sup> Given that Applicant does not yet have a job that pays enough to cover her current living expenses, the record cannot indicate when, if ever, her financial situation will be settled enough for her to make clear progress on her delinquent debts. 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–t:	Against Applicant (except for SOR 1.i.)

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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.

## **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