



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-03608
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 31, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant’s clearance is denied.

On 3 December 2009 and 2 February 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) listing security concerns under Guidelines F, Financial Considerations and E, Personal Conduct.<sup>2</sup> Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me 12 March 2010, and I convened a hearing 29 April 2010. DOHA received the transcript (Tr.) 7 May 2010.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 2-12, and Applicant exhibit (AE) A (submitted post-hearing).

<sup>2</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 1 September 2006.

## Findings of Fact

Applicant admitted the financial allegations of paragraph 1, except for SOR 1.a and 1.b. She denied falsifying her clearance application.<sup>3</sup> She is a 49-year-old configuration manager employed by a defense contractor since February 2009. She makes about \$89,000 per year and reports \$1,000 positive monthly cash flow. She has not previously applied for a security clearance. She has been married for 27 years and has two adult children. However, she and her husband have been separated for the last three years.

When Applicant completed her February 2009 clearance application (GE 1), she answered “no” to six financial questions asking if she had repossessions (26.b), judgments (26.e), collection accounts (26.g), charged-off accounts (26.h), 180-day past-due accounts in the last seven years (26.m), and 90-day past-due accounts currently (26.n). In fact, she had two repossessions, three judgments, 16 collection accounts, two charged-off accounts, and one account that was currently 90 days past due and had been 180 days past due in the last seven years. Applicant knew she had delinquent debts dating to before her mother’s death in September 2004. She claims that she thought her accounts were current because of cash she had obtained by refinancing her house to pay her bills as well as her children’s college expenses.

The SOR alleges, and government exhibits confirm, 24 delinquent debts totaling over \$54,000.<sup>4</sup> Applicant admits 22 debts totaling nearly \$51,000. Over \$27,000 of the delinquent debt is for student loans taken out for herself and on behalf of her two sons, now 23 and 27 years old. Applicant paid the judgment at 1.c in March 2003 and the telephone bill at 1.j in July 2005 (AE A). Other than these two debts, Applicant took no steps to address her debts until after the hearing, despite the fact that in August 2009 she claimed that she had arranged a number of payment plans to begin the next month (GE 6). She acknowledged at hearing that none of the debts had been paid (Tr. 52) and stated she lacked the funds to repay the debts (Tr. 63).

After the hearing, Applicant paid two debts (1.c and 1.x). She produced three written settlement offers from creditors (1.m, 1q, 1.u), two of which were for substantial discounts, but produced no proof of any payments. She documented one \$50 payment on debt 1.g on what she claimed, without corroboration, to be a settlement agreement to pay that much monthly. She claimed, also without corroboration, to have agreed to pay \$25 per month on debt 1.l, and provided proof of a \$25 payment in May 2010. However, the payment was to a different creditor than the listed creditor and Applicant provided no evidence to show that the payee was the successor-in-interest to the original collection

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<sup>3</sup>Before the hearing, Department Counsel sent Applicant technical amendments to paragraph 2 to reflect the actual wording of the questionnaire alleged to be falsified. In so doing, the SOR allegations changed from a.-f to a.-e. I granted the motion to amend (Tr. 12-13).

<sup>4</sup>Record evidence suggests, based on the matching amounts due, that the debts at 1.l and 1.v are duplicates of the debts at 1.j and 1.k, respectively. Accordingly, I find 1.l and 1.v for Applicant.

agent. She claimed, again without corroboration, to have agreed on repayment plans on debts 1.a and 1.d. She claimed to have paid the judgment at 1.b, but the document she provided as evidence does not prove the judgment was paid. Finally, she documented her April 2010 application to consolidate her five educational loans (1.h, 1.n, 1.o, 1.p, and 1.s).

Applicant attributes her financial problems to medical expenses incurred caring for her terminally-ill mother from 2002 to her death in September 2004, as well as the expenses of paying for her mother's apartment where her husband (Applicant's stepfather) lived while her mother was ill. She was also unemployed from August 2007 to January 2008. Separation from her husband has contributed to her financial distress. She has also felt obligated to take out parent education loans to pay for her sons' college educations.

Applicant produced no employment or character references for evaluation.

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline 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 substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to 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>5</sup>

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<sup>5</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 significant delinquent debt dating back to before September 2004.<sup>6</sup> She has not taken effective action to address her financial problems.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.<sup>7</sup> Her mother's illness and death (and the attendant expenses) and her separation from her husband are circumstances beyond her control. Taking out educational loans for her children when she could not keep up with her own expenses are not. Further, she did not deal responsibly with her financial problems, taking action only after the hearing.<sup>8</sup> Applicant has not sought credit counseling or otherwise brought the problem under control.<sup>9</sup> Applicant's post-hearing flurry of activity to address her debts does not constitute a good-faith effort to satisfy her debts.<sup>10</sup> The Government is not the collection agent of last resort. Applicant's are expected to deal responsibly with their debts without outside pressure. Applicant was aware of the Government's security concerns in August 2009 when she stated she had a number of repayment plans ready to begin. She did not begin repayment then and has corroborated very little of her claimed payments now. I conclude Guideline F against Applicant.

The Government also established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Given her recent financial situation I conclude she deliberately concealed her financial delinquencies from the Government.<sup>11</sup> She acknowledges that she knew she had financial problems in the past. Her claim that she thought she had brought the debts current with the proceeds from refinancing her house (also to be used for her sons' college expenses) is simply not

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<sup>6</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;

<sup>7</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>8</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>9</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>10</sup>¶ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<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. . . ;

credible. Finally, even that explanation does not satisfy the plain language of the clearance application seeking information about financial problems even if recently resolved.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose her financial difficulties until her subject interview.<sup>12</sup> Applicant's failure to disclose her adverse finances 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 herself provides some indication of her 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 she is willing to put her personal needs ahead of legitimate Government interests. I resolve Guideline E against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Subparagraph c:	For Applicant (paid before SOR)
Subparagraphs d-i:	Against Applicant
Subparagraph j:	For Applicant (paid before SOR)
Subparagraph k:	Against Applicant
Subparagraph l:	For Applicant (duplicate)
Subparagraphs m-u:	Against Applicant
Subparagraph v:	For Applicant (duplicate)
Subparagraphs w-x:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph a-e:	Against Applicant

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<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;

## **Conclusion**

Under 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