



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-04210
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

February 8, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 4 September 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 4 January 2010, and I convened a hearing 8 March 2010.<sup>3</sup> DOHA received the transcript 16 March 2010.

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<sup>1</sup>Consisting of the transcript (Tr.), Government's exhibits (GE) 1-13, and Applicant's exhibits (AE) A-J.

<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 on 1 September 2006.

<sup>3</sup>I postponed the hearing from 8 February 2010 because of record snow in the metropolitan area.

## Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.m and 2. a-d.<sup>4</sup> She is a 38-year-old program manager employed by a defense contractor since October 2006. She has been continuously employed since at least 1991, except for a brief period from February–May 2006, and a longer period from October 2004 to September 2005, when she was on medical and maternity leave related to the birth of her second child. She seeks to retain the clearance required by her job. She has been married three times and divorced twice, although she is currently separated from her husband for financial reasons. She and her two children live with her mother to cut expenses. She is a college graduate, and is one course assignment from obtaining her master's degree.

The SOR alleges, Government exhibits (GE 4-6) substantiate, and Applicant admits 11 delinquent debts, totaling over \$120,000. Applicant took no action on these debts until she received the SOR in October 2009. Her documentation of these efforts varies considerably in terms of reliability.

Applicant paid the debt at SOR 1.a in November 2009 (AE E). She paid the debt at SOR 1.f in December 2009 (AE G). She established a repayment plan on the debt at SOR 1.i in November 2009, and made at least one payment in February 2010 (AE A).<sup>5</sup> In January 2010, Applicant negotiated a settlement on the debt at SOR 1.h, a \$5,000 debt that had grown to \$5,500 (AE F). The creditor agreed to accept \$3,570 from Applicant in four equal payments of about \$893, to be paid in late January 2010, February 2010, March 2010, and April 2010. Applicant testified (Tr. 52) that she was having payments of \$224 deducted from her checking account weekly, but produced no proof that any payments had been made.

AE B purports to show the debt at SOR 1.b paid in full in November 2009, but the document itself bears no indication it is anything but a printed page with account information. There is nothing to indicate the document originated with the creditor. AE C is a 4 January 2010 demand letter from a state educational loan authority on a defaulted loan of \$111,500.<sup>6</sup> Applicant annotated AE C, purporting to show a February 2010 rehabilitation plan to pay \$675 per month for nine months—beginning in March 2010—to rehabilitate the loan, remove it from default status, and return it to a lender to resume normal payments. However, Applicant has no proof that she has made any required payment (Tr. 52). In December 2009, the creditor at SOR 1.d offered Applicant an opportunity to settle the \$7,000 loan that had grown to \$7,300 (AE D). Handwritten annotations suggest she was to pay \$350 per month for six months, although it is unclear from the notes what the settlement figure is. AE I suggests that Applicant made

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<sup>4</sup>However, Department Counsel moved to strike SOR 1.i as a duplicate of SOR 1.h (Tr. 13).

<sup>5</sup>SOR 1.i was alleged as a debt \$3,000 past due. Applicant defaulted on the account, so the amount being repaid is nearly \$15,800.

<sup>6</sup>Which Applicant testified (Tr. 51) had grown to \$130,000.

payments in December 2009 and January 2010, and a February 2010 payment was to be deposited in late February. However, while the balance owed has decreased, it is not clear what the actual payment was. The creditor for the debt at SOR 1.j demanded payment in November 2009 (AE H).<sup>7</sup> Applicant annotated the demand to reflect that she paid \$805 in February 2010, but she has not otherwise corroborated that payment. Applicant has taken no action to address the \$2,000 defaulted timeshare loan at SOR 1.c, the \$2,000 defaulted education loan at SOR 1.e, the \$100,000 defaulted home equity loan at SOR 1.g, or the \$700 collection account at SOR 1.k.

Applicant has an extensive history of financial problems over 20 years. In 1991, when she was 19, she went to work for the federal government as a clerk typist. She got her first clearance in April 1991 (GE 1, 3). In November 1991, she was charged with writing worthless checks (GE 7, 8) on the military post where she worked. In May 1992, she entered a pre-trial diversion program (GE 10). Among other conditions, she was required to make restitution on the checks, and was ordered to perform community service. Applicant understood that the charges would eventually be “expunged.” In December 1991, her clearance was suspended pending investigation into the check charges and her financial situation (GE 9). As part of that investigation, Applicant completed another clearance application in December 1991 that showed she had several delinquent accounts. Based on this information, her agency sent an adverse information report to the adjudication facility, requesting a final clearance determination. The record contains no information on the result of that referral. However, she remained employed by the federal government until October 1998.

Applicant’s finances continued to be problematic. In August 1993, she filed a Chapter 7 bankruptcy petition, and obtained a discharge of her dischargeable debts in December 1993 (GE 13). She filed for bankruptcy because she had overspent her income and was at risk of losing her job (Tr. 80-81). The bankruptcy triggered a security investigation into her finances. She was interviewed about her finances in August 1995 (GE 12), and provided additional information to the adjudication facility in August and October 1996 (GE 11). In November 1996, the adjudication facility granted Applicant a clearance conditioned on her maintaining financial stability and continuing payment on her delinquent state and local taxes (GE 11). Applicant agreed to the conditions in December 1996, but there is no information in the record about her satisfying the conditions.

Applicant attributes her current indebtedness to the foreclosure on her house in April 2008. She and her husband bought the house in 2004. The initial monthly payment was \$2,500. However, the loan had escalator provisions that eventually raised the monthly payment to \$5,000-6,000. In addition, they took out a home equity loan to do an addition on the house. They also used some of the money to send one of their children to private school. Nevertheless, they were unable to keep up the payments and the

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<sup>7</sup>SOR 1.j was alleged as a debt \$80 past due. Applicant defaulted on the debt, so the amount being repaid was nearly \$800.

house was foreclosed upon. The record is unclear whether they will owe any deficiency on the loan once the process is complete.

Applicant does not have a budget, and has not received any credit counseling or financial education. She was signed up to take a financial class at her local community college, but the class was cancelled for insufficient enrollment, and Applicant has not pursued any alternatives.

When Applicant completed clearance applications in December 1997 (GE 2), January 1999 (GE 3), and June 2008 (GE 1), she failed to disclose that her clearance had been suspended in December 1991 as required by the applications. She denies any intent to falsify her applications, claiming she was told by her employers that her clearance was only “on hold.” She also claims (Tr. 65-74) that she thought that once her pre-trial diversion for her bad check charges was complete and the charges expunged, her clearance issue would be resolved. This is a non sequitur, and is contradicted by her acknowledgment (Tr. 66) that she signed the notice of suspension (GE 9) in December 1991.

## **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>8</sup>

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<sup>8</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 1991.<sup>9</sup> Her clearance was suspended in December 1991 partly for financial reasons. That she was financially naive at not-yet-20 years old is not surprising. But she continued to have financial problems, and those problems continued to imperil her clearance. She pursued a chapter 7 bankruptcy discharge in December 1993 because her clearance was at risk, threatening her job. Her finances were again a focus of clearance-related inquiries in 1995-1996, when she was 24-25 years old. While her finances appear to have been better from then to 2004, she appears to have undertaken financial commitments that she did not fully understand. She took on a mortgage with interest-rate escalators that drove her monthly payment from \$2,500 to \$5,000-6,000. She took on additional debt of a \$100,000 home equity loan. She bought a time-share. And all this was against a backdrop of over \$100,000 in education loans.

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are both recent and multiple.<sup>10</sup> The problems are not largely due to circumstances beyond her control, particularly where they are of such long duration. But the most telling aspect of Applicant's financial problems is her response to them.

Applicant has taken no action on four significant debts, has no plan for addressing them, and has no plan for even having a plan. Any action she has taken on her debts has occurred after she received the SOR. DOHA is not the collection agent of last resort and her efforts to address her debts after the SOR do little to dispel the security concerns raised by her financial problems. She has little documentation of claimed payments, itself a potential sign of her financial disorganization. Thus, her response has been largely unsatisfactory.<sup>11</sup> She has not undertaken credit counseling of any kind of financial education. Her closing argument plea for more time to get her finances in order concedes that her financial problems are not under control.<sup>12</sup> The payments that have been paid have not been paid in a timely, good-faith manner.<sup>13</sup> Whatever efforts she has made to address her poor finances have been belated, sporadic, ineffectual, and largely undocumented. The record does not indicate when, if ever, her financial situation will be settled enough for her to make clear progress on her

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<sup>9</sup>¶19.(a) inability or unwillingness to satisfy debts; ( c) a history of not meeting financial obligations;

<sup>10</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>11</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>12</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>13</sup>¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

delinquent debts. I resolve Guideline F against Applicant. Consideration of the whole-person factors yields no different result.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. It is unlikely that her employer told her that her clearance was only “on hold” in December 1991. And even accepting that her supervisors may have used a less formal term to describe her status, the fact remains that she received written notice of the suspension and signed a receipt acknowledging that fact.<sup>14</sup> Thus, the burden of persuasion shifted to Applicant to refute or mitigate the Government’s information.

Applicant’s other explanation that she thought her clearance issue would be resolved once her criminal record was expunged is simply not credible. The two processes are completely separate. The language of the investigation question is quite clear, asking if an applicant has “ever” had an adverse clearance action. The answer to that question was certainly relevant and material on her December 1997 clearance application. While the suspension was more remote in time on the January 1999 and June 2008 clearance applications, the failure to report it continues to have security significance both as a continuing course of conduct and as additional falsifications necessary to preserve the first falsification.

None of the mitigating conditions apply. Applicant made no effort to correct her applications before she was confronted with the information, and her omission was not significantly aided by incorrect advice given to her about completing her clearance applications. The whole-person factors require no other result, as there is no evidence in the record about Applicant that could overcome the negative inferences to be drawn by her conduct. I resolve Guideline E against Applicant.<sup>15</sup>

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a–k:	Against Applicant
Subparagraph l:	For Applicant
Subparagraphs m–p:	Against Applicant

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<sup>14</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. . . ; (b) deliberately providing false or misleading information regarding relevant facts to an . . . investigator . . . ;

<sup>15</sup>I find SOR 2.d for Applicant because her bad check arrest in November 1991 and her clearance suspension in December 1991 have no independent security significance beyond their relevance as proof of her financial problems.

Paragraph 2. Guideline E:           AGAINST APPLICANT

Subparagraphs a–c:                   Against Applicant  
Subparagraph d:                      For Applicant

**Conclusion**

In view of 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