



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05574
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

March 29, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 February 2010, the Defense Office of Hearings and Appeals (DOHA) sent a Statement of Reasons (SOR) to Applicant listing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR and requested a decision without hearing. The record in this case closed 27 May 2010, the day Department Counsel stated no objection to Applicant’s response. DOHA assigned the case to me 7 June 2010.

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<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-9 and the Applicant’s response thereto.

<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.

## Findings of Fact

Applicant admitted the SOR financial allegations in 1.a, 1.c, and 1.d; she denied the allegations in 1.b and 1.e. She is a 39-year-old quality assurance engineer employed by a U.S. defense contractor since July 2006. She held a security clearance in July 2007. Her current clearance status is unknown.

The SOR alleges, and Government exhibits substantiate, five delinquent debts totaling nearly \$30,000. Applicant admits three debts totaling \$25,000. None of the debts except SOR 1.a appear on her most recent credit report (GE 7).

In March 1996, Applicant went to work for a different defense contractor, and was continuously employed there until October 2001 when she was laid off. Her husband was employed by the same company until he was laid off in 2003. In early 2003, one of Applicant's children fell and suffered traumatic brain injury—along with expensive medical care.

Applicant was unemployed until January 2003, when she got a part-time job as an interior design consultant, not her regular line of work. Not until June 2006 did she get a full-time job in her career field. Her husband remained unemployed until 2005.

During their periods of unemployment, their finances deteriorated significantly. Applicant's October 2006 tri-agency<sup>3</sup> credit report (Item 9) showed 24 accounts paid as agreed and 19 accounts with derogatory information. All the SOR debts appear in this credit report except 1.e, which first appeared in Applicant's April 2009 tri-agency credit report (GE 8) and disappeared from her September 2009 credit report (GE 7) after she disputed the debt.

SOR debt 1.a reflects a billing dispute between Applicant and her cellphone provider. All three credit reports record that Applicant disputed the debt, and she provided a copy of a November 2009 dispute letter sent to the creditor (GE 6). Nevertheless, the creditor settled the debt for less than full value in March 2010 (Response to FORM). Applicant did not recognize SOR debt 1.b. and disputed it by letter in November 2009 (GE 6), to which she received no response. Applicant contacted the creditor by telephone and the creditor could not validate the debt. Experian removed the debt from her credit report in March 2010 (Answer to SOR) after investigating the debt.

SOR 1.c alleges a credit card account in collection (GE 9) on behalf of a card issuer that merged with another card issuer in January 2006. Applicant claims that the debt at 1.c reflects two credit cards in collection, one of which is duplicated in SOR 1.d. Applicant opened these accounts in June and July 2001, both with credit limits of \$6,300. Both accounts became delinquent when Applicant lost her job. The October 2006 credit report shows two separate accounts (each reported by a different credit

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<sup>3</sup>Experian, Trans Union, and Equifax are the three main credit reporting agencies in the US.

agency) identified by account numbers with the last four digits missing. One account was charged off in the amount alleged in 1.d and referred for collection. The other account was referred for collection, with no balance given. The October 2006 credit report also contains entries in the name of the merged card issuers (also reported by different credit agencies). One entry records neither an account number nor a balance due. The other entry is identified only by the last four digits of the credit card number and lists a card limit of \$12,500 and a high credit of \$13,810, but no balance due. Finally, the October 2006 credit report contains an entry for the collection agent alleged in 1.c. The account number listed is internal to the collection agent, and the only information connecting the account to one of the card issuers is the high credit of \$13,810 listed in the entry.

The April 2009 credit report contains no entry by the collection agent in 1.c or by the merged card issuers. Two separate collection accounts by the same creditor listed in the October 2006 credit report are listed in the April 2009 report. One is identified by the same last four digits that identified one of the merged card issuers in the October 2006 report, and reports an amount in collection of \$12,500—the high credit figure from the October 2006 entry. The other account is identified by last-four digits that appear nowhere else in the credit reports, and shows a high credit balance of \$10,741, a balance that appears nowhere else in the credit reports.

Applicant claims she contacted the collection agent in 1.c and was told that the account(s) had been returned to the creditor. The fact that the collection agent does not have an entry in either the April or September 2009 credit reports tends to corroborate Applicant's claim. Applicant requested payoff balances from the creditor on both accounts in November 2009 (GE 6). Applicant's Answer and her Response to the FORM document her discussions with the creditor and provide March 2010 letters from the creditor confirming that both accounts have a zero balance—and zero credit limit.

The snapshots of Applicant's financial situation contained in her three credit reports show an improving financial situation. Her October 2006 credit report showed 24 accounts paid as agreed and 19 derogatory entries. Her April 2009 credit report shows 22 accounts paid as agreed and only seven derogatory entries. Her September 2009 credit report lists 19 accounts, 14 of which have the highest rating. The two most derogatory ratings refer to the debt at 1.a, now settled. In addition, the three credit reports show that Applicant had other past-due accounts (not alleged in the SOR) that she had brought current.

Applicant's response to DOHA interrogatories (GE 6), her Answer, and her Response to the FORM contain numerous character and work references from her supervisors, co-workers, and church contacts. All references consider her honest and trustworthy. There is no evidence to suggest she had any issues handling classified information when she had a clearance.

## Policies

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).<sup>4</sup>

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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>4</sup>

## Analysis

The Government established disqualifying conditions under Guideline F, but Applicant mitigated the security concerns. Applicant and her husband had financial problems between October 2001 and sometime in 2005 because of their varying periods of unemployment and a severe injury to their child in early 2003.<sup>5</sup> However, after Applicant regained full-time employment in June 2004 and her husband got a full-time job in 2005, they began to address their delinquent debt. Their October 2006 credit report showed a couple of delinquent accounts that were now current. Their April 2009 credit report showed that many more accounts had been brought current, and only seven accounts had derogatory entries, down from 19 in October 2006. Even allowing for overlapping entries by the three credit agencies, this is significant progress. Applicant settled SOR debt 1.a in March 2010, and none of the other alleged debts appear on her most recent credit report. Two debts (1.b and 1.e) were successfully disputed. Two other debts (1.c and 1.d) may have aged off her credit report, but the creditor confirmed to Applicant in writing that the two accounts have zero balances.

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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;

Applicant meets most of the mitigating factors for financial considerations. Her financial difficulties were multiple, but distant in time, and occurred under a confluence of circumstances not likely to recur.<sup>6</sup> Her unemployment, her husband's unemployment, and their daughter's serious accident are circumstances beyond their control, but they clearly began addressing their delinquent accounts once they both got full-time jobs. They disputed accounts they did not believe belonged to them, and brought past-due accounts current.<sup>7</sup> Although Applicant has not received financial counseling, there are clear indications her financial problems have been brought under control.<sup>8</sup> The only alleged debt still on her September 2009 credit report has been settled. Although two of the remaining debts were disputed and deleted from her credit report and the creditor on the last two accounts reports that no payments are due, Applicant's overall conduct as reflected in her credit reports constitutes a timely, good-faith effort to address her delinquent debts.<sup>9</sup> Finally, Applicant showed good financial judgment by challenging incorrect entries on her credit reports.<sup>10</sup> She documented those efforts as well as her efforts to resolved the credit card debts at 1.c and 1.d. There are no more delinquent debts to address, and she and her husband are current on their regular expenses. I conclude Guideline F for Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:           FOR APPLICANT

Subparagraphs a-e:           For Applicant

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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 debt;

<sup>10</sup>¶20 (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt . . . and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue;

## **Conclusion**

Viewing the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge