



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06045
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel  
For Applicant: Adam D. Elfenbein, Esquire

March 9, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 16 December 2009, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, and requested a hearing. DOHA assigned the case to me 27 May 2010, and I convened a hearing 8 July 2010. DOHA received the transcript (Tr.) 16 July 2010.

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

<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 September 1, 2006.

## Findings of Fact

Applicant admitted the SOR allegations. He is a 42-year-old consultant employed by a defense contractor since April 2009. He had a clearance in 2003 when he was employed by the federal government. He has been continuously employed full time since May 1996. His current annual salary is \$135,000. He is divorced, with no children or other financial obligations to his ex-wife.

The SOR alleges, Government exhibits confirm, and Applicant admits delinquent first and second mortgages totaling nearly \$289,000. The property was foreclosed upon in 2009, and sold in November 2009 leaving a deficiency of about \$109,000 on the first mortgage (GE 12). The second mortgage remains unpaid. State law prohibits a creditor from pursuing the deficiency balance unless the creditor files within 90 days of the foreclosure sale. There is no evidence that the creditor did so. Recent federal law (HE 1) may keep the deficiency amount from being considered taxable income to Applicant.

Applicant ran his own consulting company from about November 2004 to July 2006. From November 2004 to July 2005, Applicant worked on a contract outside the U.S. that allowed him to bank \$100,000. When Applicant returned to the U.S., he was unable to get significant work for his company. Nevertheless, in August 2005, he bought a house in a burgeoning real estate market because “he needed a place to stay,” (Tr. 43) and hoped to take advantage of the rapid appreciation of house values in that market.

Applicant bought the house for \$290,000. He paid about \$3,000 in closing costs, but funded 100% of the purchase price with an 80% first mortgage and a 20% second mortgage. His monthly mortgage payment was \$2,200. Although he had no income from his company, he figured the \$100,000 would tide him over until business improved. He also used credit cards to pay everyday expenses. He fell behind on some of the cards, but has brought most of them current. His May 2009 credit report (GE 3) shows many accounts with zero balances closed at his request. His \$100,000 savings is gone.

Business never improved and Applicant closed the company in July 2006. Meanwhile, he began to have difficulty meeting his mortgage payment. He sought, and got, some relief from the lender, but soon realized that he would not remain solvent in the long run. In July 2006, he took a job out of state. He rented his house in September 2006 for \$1,300 per month. He used some of that money to pay his mortgage, but also used some of it to pay current living expenses. He made some unsuccessful attempts to work out a repayment plan with the lender, but eventually stopped paying the mortgage in 2007. Foreclosure followed. The housing market where Applicant bought the house has completely collapsed, ensuring that the house could not be sold for enough to cover the mortgages.

Applicant has received no formal credit counseling or financial education. He does not appear to have a formal budget, although he states he is current on his everyday expenses. He claims—without corroboration because all contacts have been

by telephone—to have asked the mortgage companies several times for a repayment plan or the Internal Revenue Service form that would show the putative income from the mortgage forgiveness. The record contains no work or character evidence.

## **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 used when a case can be measured by 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).

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 means deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.<sup>3</sup>

## **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has significant delinquent debt for which he has no ameliorating explanation.<sup>4</sup> I reach this conclusion because Applicant’s financial problems were not largely due to circumstances beyond his control, i.e. changes in market conditions, but were due to his buying a home with 100% financing when he had no income. The fact that he lived in the home does not change the fact that the financing method was chosen to take advantage of the speculative housing market he bought into. His idea that his \$100,000 savings would cover him until his income stream improved may seem reasonable at first look, but actually was irresponsible because this pool of money was the same pool from which Applicant

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

would have to pay his living expenses. Indeed, Applicant fails to adequately explain how with \$100,000 in the bank in July 2005, he experienced financial pressure in July 2006 that forced him to seek relief from his lender, and was led to stop paying the mortgage in 2007.

Applicant does not state when the \$100,000 was exhausted, but had the funds been used only to pay his mortgage, the \$100,000 was enough money to pay the mortgage for 45 months. Obviously, with no income from his company from July 2005 to July 2006, he had to use some of the money for everyday expenses (although at that time he said he was also using his credit cards to pay everyday expenses). Nevertheless, Applicant reports having difficulty meeting his mortgage payments by July 2006. Further, although Applicant moved to another state to take a job in July 2006, and rented his house for \$1,300 per month beginning in September 2006, he still had to use some of the rent money for purposes other than paying his monthly mortgage. This literally does not add up.

The mitigating factors for financial concerns provide Applicant little relief. His financial difficulties are both recent and multiple, and did not occur under circumstances unlikely to recur.<sup>5</sup> As stated above, the root of Applicant's financial problems lies in his irresponsible purchase of a house, and not circumstances beyond his control, but beyond that he has not acted responsibly in addressing his mortgages.<sup>6</sup> More precisely, he has not shown how abandoning his mortgages was either a responsible action or an action he had no realistic choice about.

Applicant has not sought meaningful credit counseling, made a budget that demonstrates how he will pay his delinquent debts, or devised a plan to address his debts, so I cannot conclude he has brought the financial problem under control.<sup>7</sup> While I cannot conclude that his efforts to pay his creditors were made in bad faith, in the final analysis those efforts have been sporadic and ineffective.<sup>8</sup> Although, DOHA is not the collection agent of last resort, Applicant has failed to demonstrate why he has not come up with a viable plan for his delinquent debt, if he has the means. I conclude Guideline F against Applicant.

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<sup>5</sup>¶ 20.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur .

<sup>6</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>7</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>8</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
Subparagraphs a–b:	Against Applicant

### **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