



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 10-01240
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

November 30, 2010

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 July 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant listing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered and requested a decision without hearing. The record in this case closed 1 October 2010, the day Applicant's response to the Government's FORM was due. Applicant provided no additional information. DOHA assigned the case to me 8 November 2010.

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<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-8.

<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. He is a 49-year-old systems administrator employed by a defense contractor since April 2008. He appears to have held a clearance since April 2007.

The SOR alleges, Applicant admits, and government exhibits substantiate, eight delinquent first and second mortgages totaling over \$675,000, \$112,000 of which is past due. He has taken no concrete action to resolve his mortgages.

In 2006, Applicant bought four houses for \$677,000 as investment properties. He bought them from the same developer, two houses each in two different states. Although Applicant paid some money toward loan costs, the developer required no down payment, agreed to pay some fees associated with the houses for two years, and committed to finding tenants for the houses.

After about a year, the developer went out of business. Applicant became responsible for all the expenses of the four properties and had to find his own clients. However, he was unable to rent the properties for enough rent to cover his costs. He started to fall behind, and in summer 2008, stopped paying on the mortgages altogether. He received collection notices from the banks, which he ignored. The banks eventually foreclosed on the four properties, and they remain in foreclosure. Applicant has had no contact with the banks since he stopped paying, and believes that he will have no remaining liability to the banks after the foreclosure process is finished. However, he provided no documentation to corroborate that claim. As he owes substantially more than the current fair market value of the houses, a deficiency remainder is likely.

## **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 Guidelines 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 compels 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 is \$112,000 past due on over \$675,000 in mortgages related to four properties he bought in 2006 as investments.<sup>4</sup> Applicant does not appear to have been particularly qualified to take on such an investment, but the circumstances of the purchases (100% financing, developer help to pay some ongoing fees, and developer recruitment of tenants for Applicant) would have warned any person with reasonable common sense that the deal was too good to be true.

Even without the downturn in the housing market, the developer’s going out of business was reasonably foreseeable. Further, the developer’s subsidy was going to end in another year anyway, and Applicant had no apparent plan for dealing with that eventuality. Applicant’s inability to cover his costs began before the housing market declined. His completely walking away from his mortgages without any efforts to work with the banks is irresponsible. He has not had any financial counseling, and has no plan to deal with his debts. This is particularly true if he is incorrect and has a deficiency remainder after the foreclosure process is completed. Even if he is correct, walking away from his financial obligations is not a responsible action. Consequently, none of the mitigating factors for financial considerations apply. Further, the record lacks any information upon which to base a “whole-person” analysis. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:           **AGAINST APPLICANT**

Subparagraphs a-h:           **Against 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;

## **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