



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-02873
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

October 28, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 8 April 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 3 June 2011, and I convened a hearing 19 July 2011. DOHA received the transcript (Tr.) 27 July 2011.

---

<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, and Applicant exhibits (AE) A-D. AE D was timely received post hearing.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 SOR financial allegations 1.a and 1.c. He denied SOR 1.b, claiming that he only owed a \$127,000 deficiency judgment after the foreclosure sale of his home. He is a 39-year-old independent contractor who needs his clearance to bid on Government contracts. He appears to have had a favorable public trust determination in October 2007, but has not held a security clearance.

The SOR alleges, and Government exhibits substantiate, three delinquent debts totaling nearly \$535,000. Applicant admits over \$19,000 delinquent child support (1.a) and an over \$12,000 state income tax lien that has been reduced to judgment (1.c). He claims that the alleged foreclosure deficiency of over \$503,000 is actually \$127,000 (1.c).

The debts alleged in the SOR arose when Applicant was led into what he believed was a legitimate investment opportunity (AE A). Broadly described, the program involved Applicant (and others) investing money (minimum \$50,000; in Applicant's case \$100,000) to build their "dream home." Applicant and his then wife took equity out of their current home to invest in the program, which promised to generate enough income to pay off both homes in five years, in November 2006 (AE B).

The program turned out to be a Ponzi scheme, the kind that generates news headlines and criminal charges against the proponents. The scheme began to fall apart in 2007, when state agencies acted to shut down the program and pursue securities violations and investment fraud charges against the program's principals. The assets of the company have been seized, but the "investors" are stuck with mortgages on properties that they generally cannot pay. The principals in the scheme have been convicted and sentenced to up to 10 years in prison (AE C).

While the home mortgage scheme was disintegrating, Applicant filed for divorce from his wife in March 2008. They were unable to reach an agreement on a property settlement, and the court ordered them to liquidate the two properties. At the time, the housing market had crashed. Applicant short-sold his primary residence and allowed the other house to go into foreclosure. The creditors on the foreclosed property obtained a judgment for over \$503,000 in February 2009 (GE 5), although there is evidence that the creditor's attorney was seeking only \$127,000 in March 2009 (GE 3).

The creditor for Applicant's short-sold primary residence apparently forgave Applicant's deficiency, resulting in imputed income to him of \$35,000. Consequently, the state obtained a \$12,134 tax lien judgment against Applicant in August 2010 (GE 4). With penalties and interest, that debt (combined with another account) had grown to over \$24,000 in May 2011 (AE D). Although not alleged in the SOR, Applicant provided records (AE D) to show that he also had a tax debt to the Internal Revenue Service (IRS) that was over \$42,000 in January 2010. Applicant established a repayment plan, and his payment records document \$400 monthly payments from November 2010 to March 2011 and again in June 2011. However, Applicant's May 2011 statement from

the IRS shows that his debt has risen to over \$70,000 because of penalties and interest that continue to accrue.

Adding to Applicant's credit woes, when he separated from his wife, he was ordered to pay nearly \$3,300 monthly child support for his three children. In 2008, he suffered a mild heart attack, and was unable to perform on his Government contract. He fell behind on his child support, resulting in collection action for over \$19,000 in arrears. He obtained another contract and began paying his child support automatically out of his paycheck.

In March 2009, Applicant's ex-wife filed for chapter 7 bankruptcy protection to escape her share of the liability for the two mortgages (AE D). She was removed from the foreclosure judgment in July 2009 (GE 5).

Applicant's prime contractor lost the contract in June 2010, and he was again unemployed until October 2010. Since then, he has been underemployed. Applicant was trying to get the child support order modified, and had a hearing scheduled in July 2011. However, while the case was rescheduled to September 2011, the arrears were assessed at over \$30,000 (AE D).

### **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).

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 fully mitigate the security concerns. Applicant has four delinquent debts totaling over \$250,000. Accepting Applicant’s understanding of the status of his foreclosed property, he owes \$127,000 on that account. His delinquent child support is over \$30,000 and growing. Although he appears to have made some payments on his state and federal tax accounts, those payments have not been enough to keep the balances from growing to over \$24,000 and \$70,000.<sup>4</sup>

Applicant partially meets significant mitigating factors for financial considerations. However, those mitigating conditions are insufficient to overcome the adverse implications of his current financial situation. While his financial difficulties are recent and ongoing, they were limited to this one convergence of events, and the circumstances under which they occurred are unlikely to recur.<sup>5</sup> Those events—fraud scheme, divorce, illness, and unemployment/underemployment were beyond Applicant’s control. Given his loss/reduction in income, he acted responsibly in addressing his debts under the circumstances.<sup>6</sup> Further, Applicant has tried, albeit unsuccessfully, to bring his tax and child support accounts current.<sup>7</sup>

The concern with Applicant is that while he credibly states his intent to resolve these debts, his financial situation remains in flux. At his current income level, he is not able to make regular payments on these accounts, much less begin to address the growing indebtedness. Without some action by the courts to modify his child support obligations, Applicant will not be able to get that debt under control. Similarly, unless Applicant is able to take action with the tax authorities to end the accumulation of interest and penalties, those debts will continue to grow. Finally, unless Applicant finds a way to pay his mortgage deficiency or otherwise resolve the debt without imputed income to him, the mortgage debt will continue to negatively affect his finances. Thus, there are too many unknowns for Applicant to conclude that his financial problems are

---

<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;

<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.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

headed for resolution.<sup>8</sup> He has not undertaken financial counseling, and his documents do not suggest a clear path for resolving his delinquent debts. Without such a path, I cannot conclude that financial problems are unlikely to recur. 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-c:           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.

---

JOHN GRATTAN METZ, JR  
Administrative Judge

---

<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;