



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 XXXXXX, Xxxxxx XXXXXXXX ) ISCR Case No. 10-03328  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

05/03/2012

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 6 July 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 16 March 2012, and I convened a hearing 16 April 2012. DOHA received the transcript (Tr.) 24 April 2012.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, and Applicant exhibits (AE) A-C. AE C 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 denied the SOR allegations. He is a 31-year-old software test engineer employed by a defense contractor since November 2008. He has not previously held a security clearance. He reported the financial issue alleged in the SOR on his November 2009 clearance application (GE 1).

The SOR alleges, and Government exhibits confirm, a nearly \$55,000 charged-off account. The delinquent debt represents the balance remaining on a second lien (home equity loan) on his first home.

In April 2009, Applicant and his wife bought a second home to move into. They already owned one home, but needed more space for their growing family and wanted a safer neighborhood than they were living in. They originally planned to rent their first house to one of Applicant's friends, but that plan fell through when the friend was laid off from his job. Applicant knew he would not be able to afford both first mortgages for long, and began to explore a short sale of the house with the first lien holder. The lender informed Applicant that he would have to default on the loan before it would approve a short sale of the property. Applicant stopped paying his first and second liens in May or June 2009, and both accounts became delinquent. Applicant hired a real estate company to help him manage the short sale.

In June 2010, the second lien holder accepted a short sale settlement offer, with concomitant lien release, based on a sale price of \$138,000, less \$108,600 to the first lien holder and \$6,900 real estate commission, for a net of \$13,750 to the second lien holder (GE 2). The record is not clear whether this represented an actual purchase offer or merely a projected price for purposes of getting the second lien holder's expected approval for the short sale. Nor is it clear if Applicant ever accepted these terms. However, Applicant was unable to obtain a sale at the projected price.

In November 2010, the second lien holder accepted a short sale settlement offer based on a sale price of \$125,000, less \$108,299.55 to the first lien holder, \$6,250 real estate commission, and seller closing costs not to exceed \$4,950.45, for a net of \$5,500 to the second lien holder. Again, the record is not clear whether this represented an actual purchase offer or merely a projected price for purposes of getting the second lien holder's expected approval for the short sale. However, while the second lien holder agreed to release the lien encumbering the property, it did not agree to release Applicant from the underlying debt unless he made a satisfactory arrangement to pay all or part of the remaining obligation (AE C). Applicant agreed to these terms on 10 December 2010.

The sale of Applicant's house closed on 6 December 2010 (GE 3). The settlement statement shows a sale price of \$135,000, not \$125,000, with the extra \$10,000 going to the first lien holder. The real estate commission paid was \$6,750, not \$6,250. The seller's closing costs were \$14,722.53, of which Applicant had to pay \$3,131.76 out of pocket.

Although the settlement statement showed a \$118,229.55 first lien payment, the amount disbursed by the settlement company on 13 December 2010 was \$108,229.55. The first lien holder released the lien on 17 March 2011. The second lien holder was paid \$5,500 on 13 December 2010, and released the lien on 22 December 2010. However, the release of deed of trust specifically states, “without impairing, releasing or satisfying the remaining obligations of [lien holder] under the promissory note . . .” [AE C)] The \$10,000 difference between the \$118,229.55 first lien payment shown on the settlement statement and the \$108,229.55 actually disbursed to the first lien holder is unaccounted for.

The second lien holder has filed suit against Applicant to recover the unpaid balance on the home equity loan, and Applicant has retained counsel to represent him (AE B). Applicant provided a 6 April 2011 letter from the settlement agent stating that the liens on the house were paid and have a zero balance (Answer). Applicant also provided an undated letter from his real estate company stating that they contacted the second lien holder before closing to confirm that the \$5,500 payment was in full satisfaction of the second lien, and that they recontacted the second lien holder after this issue arose to confirm with the short sale department of the second lien holder that the \$5,500 payment was a full payoff with a zero balance (Answer). However, neither the real estate company nor the settlement agent has provided any documentation from the second lien holder to confirm these assertions, and the documents they provided from the second lien holder are directly contrary to these assertions, i.e. the 2 November 2010 letter specifically reserving the right to pursue the remaining balance after accepting \$5,500 solely for the release of the lien (required for the sale to close). Nevertheless, while Applicant signed a deed of trust conveying his interest in the property on 9 December 2010 (GE 3), there is no evidence that he signed any documents at closing regarding the second lien. Although he accepted the second lien holder’s short sale conditions on 10 December 2010, the record does not indicate whether that occurred as part of closing or not. The case remains in litigation, although settlement negotiations have occurred.

Except for the first and second liens on his first home, Applicant’s credit reports (GE 2-6) contain only favorable entries. Consistent with the short sale of Applicant’s home, the first lien holder reports the account satisfied for less than the full amount owed (GE 6). Applicant reports about \$3,000 positive monthly cash flow. His work and character references are very favorable, but it does not appear that they are aware of the SOR issues (AE A).

### **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 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, 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>3</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant and his wife experienced financial problems when they purchased a second home without having a concrete plan for dealing with their first home. When they were unable to rent the first home as planned, the stagnant real estate market pushed them into a short sale of the property.<sup>4</sup> Unfortunately, the second lien holder was not as accommodating as the first lien holder. However, it appears that the financial fallout from this situation has been limited to the house and the two liens.

The mitigating factors for financial considerations give Applicant mixed aid. While his financial difficulties are recent, they were limited to the house and mortgages, and the circumstances under which they occurred are unlikely to recur.<sup>5</sup> Although the friend's layoff was a circumstance beyond her control, the overall situation was not beyond Applicant's control, and his actions to address the mortgages were only partially responsible.<sup>6</sup> Although the two liens became delinquent, Applicant remained largely current on his other expenses, including the liens on their second home. While

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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;

<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;

Applicant has not received credit counseling, and it does not otherwise appear that he and his wife were living beyond their means in any regard.<sup>7</sup>

The only unknown in the case is the resolution of the pending suit by the second lien holder. Applicant, his real estate company, and the settlement agent may have become confused about what the second lien holder had agreed to, but the present record is quite clear that it reserved the right to pursue the remaining debt even though it released the lien. Nevertheless, the situation seems certain to be resolved satisfactorily. The second lien holder clearly indicated a willingness to accept less than the full amount owed, with full release of liability, in its June 2010 letter to Applicant. It seems only a matter of time before a settlement figure is reached, and Applicant has more than adequate cash flow to pay any agreed upon number.<sup>8</sup>

Finally, even if Applicant has to agree to fully repay the second lien holder, his positive monthly cash flow is adequate to reach a repayment agreement. Thus, it seems unlikely that Applicant's financial problems will recur. The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.<sup>9</sup> Applicant has such a plan and has taken such actions. I conclude Guideline F for Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph a:	For Applicant

### **Conclusion**

Under the facts detailed in the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance granted.

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JOHN GRATTAN METZ, JR

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<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.

<sup>9</sup>ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

## Administrative Judge