



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-05021  
)  
Applicant for Security Clearance )

**Appearances**

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

August 17, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 11 March 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) 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 25 June 2011, the day Applicant’s response to the Government’s File of Relevant Material (FORM) was due. He submitted no response. DOHA assigned the case to me 8 August 2011.

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<sup>1</sup>Consisting of the FORM, Items 1-9.

<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–1.t and denied allegations 1.u–1.y, claiming the accounts had been paid. He is a 40-year-old administrative support person employed by a U.S. defense contractor since February 2010. He has not previously held a clearance. He served in the U.S. military from March 1990 to July 1997: three years on active duty and four year in the inactive reserve. He is the never-married father of three children, for whom he pays child support. He has lived with his girlfriend since January 2006, in the house he has owned since April 1996. He financed the house with a Veterans Affairs mortgage of about \$60,000 (Item 9). His monthly payment was about \$600. Applicant was never seriously delinquent on his mortgage, but did fall behind from time to time.

The SOR alleges, and Government exhibits substantiate, 25 delinquent accounts totaling nearly \$95,000. Applicant admits 20 debts totaling nearly \$79,000: federal student loan debt of nearly \$53,000 (SOR 1.s and 1.t) and medical debts just over \$26,000 SOR (1.a–1.r). Of the 20 delinquent debts that Applicant admits, 12 (all medical bills) are \$250 or less. Applicant lacks funds to address his indebtedness.

Applicant denies five medical debts totaling \$16,000. While he claimed to have paid them in 2005 and to have proof of those payments (Item 4), he did not provide the proof. However, while the March 2010 credit report (Item 9) lists balances as alleged in the SOR, the report also lists the account status of debts 1.u–1.x as “paid closed” and lists no past-due amount. It notes the collection amount for debt 1.x as zero.

From September 1993 to July 1995, Applicant attended a well-known technical program and received his associate’s degree in September 1995. He paid for this program with federal education loans, borrowing about \$9,000 each year for a total of \$18,000. He should have begun repayment shortly after he received his degree. He claims to have made payments for two to three months, but acknowledges that the accounts were delinquent after three months (Item 6). According to Applicant, in 2005 he tried to settle the loans for \$25,000 on balances that had grown to \$43,000 with penalties and interest. The lender would not agree to the settlement, but established a repayment plan for \$250 per month. Applicant claims he paid for about a year before again defaulting on the loans. The delinquent accounts now total nearly \$53,000. Applicant provided no corroboration of his claimed payments or his contacts with the lender.

In December 2005, Applicant refinanced his mortgage to take advantage of the increased valuations of property occasioned by the real estate boom of the early 2000s. He borrowed about \$130,000 to pay some medical bills and settle his student loans. It appears he paid the medical bills at SOR 1.u–1.y and a \$16,000 automobile loan. He supposedly tried to settle his student loans. He may have paid other, smaller accounts, whether delinquent or not, as his credit reports show a number of paid accounts, closed at his request. He had an adjustable-rate mortgage with a \$1,300 monthly payment, which increased to \$1,700 in 2008. By February 2010, he had fallen over \$19,000 past

due. He obtained a loan modification that rolled his past-due payment into a new mortgage of \$145,000, a lower interest rate, and an \$800 monthly payment.

In November 2006, Applicant obtained a \$16,000 second mortgage. He does not say what he used the money for. He is current on his payments, but the account has been past due at times.

Applicant's finances completely collapsed after March 2008, when he had a nearly-fatal medical crisis. The hospitalization, surgery, and follow-up treatment account for 16 delinquent medical bills incurred between March and June 2008. Applicant was then self-employed with his own company and had not purchased medical insurance, requiring him to bear the full medical cost alone. It appears that the hospital wrote-off a \$136,000 bill due to the hospital itself. The medical bills at SOR 1.k and 1.m total \$732 and fell delinquent in July 2009. It is not readily apparent that these bills are associated with his March 2008 medical crisis.

According to Applicant's clearance application (Item 5), he has been continuously employed full-time since March 2003. From March 2003 to December 2004, his employment was through a staffing company on a series of short-term projects. He worked as contractor for a state government on another short-term project from January 2005 to July 2005. He held a similar position with a different company from August 2005 to March 2007. From April 2007 to January 2010 he was self-employed doing similar work before being hired by his current company in February 2010.

Notwithstanding his clearance application, Applicant's work history consists of periods of full-time employment on a contract or project basis, whether through a staffing agency, another employer, or his own company. Consequently, he has been subject to periods of unemployment and underemployment, although not unemployed since March 2003. Indeed, it is not clear whether the clearance he seeks now is as a direct hire of his sponsoring company, or is for employment as an independent contractor on another project or series of projects.

Applicant attributes his financial problems to his 2008 medical crisis with no medical insurance, his lack of income due to intermittent and part-time work as a contractor, the increase in his adjustable-rate mortgage payment, and his monthly \$650 child support payment. He views his problems as rooted in his medical problems and his underemployment, both of which he sees as beyond his control.

Applicant has not sought credit or financial counseling because he thinks those organizations deal mostly with credit card debt, not the medical and education debts he has. He has not provided a personal financial statement or a budget.

### **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, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties, which are ongoing, and seem unlikely to be resolved any time soon.<sup>4</sup>

The most reasonable inference from this record is that Applicant has had financial problems since at least 1996. Between September 1993 and July 1995, Applicant borrowed \$18,000 in federal education loans to obtain his associate's degree. If he began repayment, he stopped within three months and defaulted on the loans, which were referred for collection. In April 1996—possibly before his education loans appeared on his credit reports as delinquent—he borrowed \$60,000 through a government-guaranteed program to buy a house. He remained current on this mortgage until October 2005 when he became 30-days delinquent for a couple of months, apparently in anticipation of his December 2005 refinancing. The mortgage was paid in January 2006.

Applicant refinanced his mortgage in December 2005 to take equity out of his house to pay assorted bills, at least some of which were delinquent at the time. The

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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;

medical bills at SOR 1.u–1y were delinquent before Applicant paid them off. Although those medical bills seem to have been incurred during a time when Applicant had no medical insurance, there is no evidence about the medical issues Applicant had then, whether or not those issues required hospitalization, and to what extent, if any, the medical issues affected his ability to work. In any event, although Applicant was able to satisfy \$16,000 in delinquent medical bills and pay off other major debts that were not delinquent, he was unable to resolve his student loans. And even before his March 2008 medical crisis, he had mortgaged his future without addressing the underlying issues that caused him to be delinquent in the first place.

Applicant was still employed in project work subject to the vicissitudes of the economy. He still had no medical insurance. He had doubled the size of his mortgage payment, with a potential increase in three years. He may have made student loan payments for about a year through 2006, but again defaulted. All these factors were a drag on Applicant's finances before his March 2008 medical crisis, which clearly further affected his ability to pay his bills. Since then, he required a mortgage loan modification (at a higher loan balance) to address over \$19,000 in delinquent payments. He still has taken no action to address his student loans, whose balances continue to grow.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and the immediate causes of his problems are recurring.<sup>5</sup> While there are circumstances beyond his control contributing to his financial problems now, those circumstances are not the cause of his financial problems, which predate the circumstances. Applicant has had problems paying his bills since finishing school in September 1995. Given his employment situation since then, refinancing his mortgage in December 2005 cannot be viewed as responsibly addressing his debts.<sup>6</sup> He merely postponed the day of reckoning. This is true even without the March 2008 medical crisis, because even without the medical crisis, he had fallen delinquent again on his student loans and was facing an increase in his adjustable rate mortgage payment. Applicant has received no financial or credit counseling, and has presented no budget.<sup>7</sup> Applicant has either not been in contact with his creditors or has failed to corroborate any of his claimed contacts or payments. None of the debts are likely to be paid, much less in a timely, good-faith effort.<sup>8</sup> Applicant has not even attempted to deal with any of the 14 debts that are \$250 or less, evidence enough that he is a long way from resolving his financial problems. 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-t:	Against Applicant
Subparagraphs u-y:	For Applicant

### **Conclusion**

In view of 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