



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
XXXXX, Xxxxxx ) ISCR Case No. 10-05895  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: L. Norman Sanders, Esquire

12/28/2012

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 3 May 2012, 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 27 July 2012, and I convened a hearing 22 August 2012. DOHA received the transcript (Tr.) 29 August 2012.

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

<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 the SOR allegations. She is a 46-year-old security officer employed by a defense contractor since about August 2009. Her record of security clearances is unclear.

Applicant has an extensive history of financial problems, marked by three bankruptcy petitions. Applicant first filed a Chapter 7 bankruptcy petition in April 2001 (SOR 1.c). In July 2001, she was discharged from nearly \$341,000 in debt, \$38,000 of which was unsecured (GE 6). Applicant attributed this bankruptcy to a complicated pregnancy, which required bed rest. She was unemployed for four months. She had medical coverage, but not disability insurance, and her unemployment payments were inadequate to keep her finances current. The Chapter 7 discharge was in her name only.

In June 2003, Applicant went to work for a government agency as a security officer. Around 2006, she was offered a lateral transfer into an administrative position with the agency. The new position paid about \$8,000 per year less than her old job, but the agency let her retain her old pay scale for awhile. The record is not clear whether her retained pay scale was for a year or three years, but there was a time when she was given overtime hours outside her regular job to help make up for the lost compensation. However, that part-time work was phased out by 2007 (Tr. 70).

Applicant and her husband had two rental properties they held as investments. One was a condominium townhouse she bought in October 1993. She kept the townhouse when she and her husband bought a house to live in in October 1997. They married in November 1999. The second investment property was a house bought by Applicant's older brother around 2004, and given to Applicant on condition that Applicant take over a rehabilitation loan and continue the necessary work on the house.

Applicant and her husband bought the October 1997 house for about \$204,000, which gave them a mortgage payment of about \$1,800 monthly. In 2005, Applicant and his wife got a home-equity line-of-credit of about \$190,000, which eventually increased their mortgage to \$2,500 monthly. They used the line of credit to buy new appliances and finish the basement in their house, as well as for rehabilitation costs on the second investment property.

The investment properties were not entirely self-financing. Initially, Applicant's younger brother rented the second investment property for \$700 per month, which was about \$80 short of covering the monthly loan payment on the property, but which did not cover taxes or insurance. However, Applicant's brother fell ill, and eventually died. Applicant went without any rental income from the property for about six months. The cash flow on the townhouse was adequate until 2008, when their tenant lost her job in the economic collapse. They also refinanced the mortgage on the townhouse in 2008 to try to stay current on the second investment property. Despite their efforts to keep up with all the payments, they were falling behind on the mortgages. The 2008 economic

collapse made it difficult to keep tenants in the investment properties, or to sell the properties without taking substantial losses.

In June 2009, Applicant again filed for bankruptcy protection, this time a joint petition under Chapter 13, claiming over \$790,000 in liabilities. Her Chapter 13 plan was approved in September 2009. During a March 2010 subject interview, Applicant stated that the monthly payment was \$800. Bankruptcy records (GE 7) show that Applicant was to pay \$800 monthly for three months and \$930 monthly for another 57 months after that, for total plan payments of just over \$55,000.

Unfortunately, her husband lost his job in October 2009, and remained unemployed until about October 2010. The \$12,000-15,000 unemployment he received during that year did not replace the \$66,000 per year he was making in his old job. While he was unemployed, he took an early withdrawal of \$20,000-25,000 from his retirement account to tide them over. Although Applicant became re-employed in October 2010 at about the same \$66,000 salary he had been paid before, they were ultimately unable to keep up with the required payments on the plan. When they stopped making payments on the plan in about February 2011, they had paid about \$17,000 on the plan, of which about \$12,000 was disbursed to creditors (AE B). The bankruptcy was dismissed for nonpayment in July 2011 (GE 7).

In December 2011, they filed yet again for Chapter 13 bankruptcy protection. The over \$840,000 in liabilities includes nearly \$700,000 to secured creditors, over \$11,000 in unpaid taxes (largely due to the early withdrawal from the retirement account), and over \$135,000 in unsecured debt. Among the creditors were six separate payday lenders and one loan consolidator, as well as personal loans Applicant and her husband had taken out in 2007 and 2008 to consolidate their bills and pay living expenses. The initial plan required 24 monthly payments of \$900 followed by 36 monthly payments of \$1,350, for a total payment of just over \$55,000. In March 2012, the bankruptcy court denied confirmation of the Chapter 13 plan, but gave Applicant leave to amend the petition.

In May 2012, Applicant filed her third amended petition on her Chapter 13 bankruptcy plan (AE A). The plan required six monthly payments of \$900, followed by 18 monthly payments of \$1,500, concluding with 36 monthly payments of \$2,500, for a total payment of over \$122,000. Although the third amendment is dated May 2012, Applicant provided documentation that she had made six \$900 monthly payments from February to June 2012, and made the first of the \$1,500 monthly payments in July 2012. Applicant claimed (Tr. 47-48), without corroboration that she had made the second \$1,500 payment in August 2012. The confirmation hearing for the third amended plan was scheduled for September 2012. Applicant and her husband have not established where the additional \$1,000 monthly plan payments will come from, although they expect to realize increased monthly cash flow of \$250 when their car loan is paid off, and they are hoping for pay raises in their jobs.

Applicant received financial counseling as required for her 2009 and 2011 bankruptcy petitions. She recently retained a credit counselor. However, she has not provided a current budget that shows enough positive monthly cash flow to make the proposed plan payments, either now or in the future. Her character and work references (AE C) consider her honest and trustworthy, and recommend her for her clearance. In August 2012, she contracted with a credit counselor to address her financial situation (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 mitigate the security concerns. Applicant's records are not a model of clarity, but the latest bankruptcy documents obscure an important fact: Applicant's finances have been running very close to the edge for several years.<sup>4</sup> The payday and consolidation loans that have been included in her bankruptcy case bespeak household finances that were not safely within her means.

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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;

The mitigating factors for financial considerations provide mixed help to Applicant. Her financial difficulties are recent, not infrequent, and while the 2008 economic collapse may be unlikely to recur with such severity, an economic downturn is a circumstance likely to recur.<sup>5</sup> The 2008 economic downturn, and Applicant's husband losing his job are circumstances beyond her control, but maintaining too little in financial reserves is not. Applicant and her husband appear to have leveraged as much credit as they could based on their combined incomes. Pursuing a Chapter 13 bankruptcy to resolve their debts was comparatively responsible, but weathering the husband's unemployment only to stop payments on the plan five months after he became re-employed, calls her judgment into question—particularly where the new plan, if approved, calls for more than \$50,000 additional payment within the same five years permitted for Chapter 13 plans.<sup>6</sup> Further, while the plan payments she has made in anticipation of plan confirmation show some good faith in attempting to resolve her debts, her failure to document her current budget, or a long-term budget including the increased plan payments in 2014, undercuts her claim to rehabilitation.<sup>7</sup>

The concern with Applicant is that while she credibly states her intent to resolve these debts, her financial situation remains in flux. Her Chapter 13 plan has yet to be confirmed, and despite her recent payments, the plan is based on an assumption that Applicant and her husband will have the additional \$1,000 monthly disposable income by 2014 in order to meet the plan requirements. This is sheer speculation. Thus, there are too many unknowns to conclude that her financial problems are headed for resolution.<sup>8</sup> She has undertaken the minimum financial counseling required by her bankruptcy filing, but has not provided any budgets to show how she will be able to continue addressing her debts. Nor has she shown how the recently retained credit counselor will contribute to the resolution of her debts. Consequently, Applicant has not shown a clear path for resolving her delinquent debts. Without such a path, I cannot conclude that financial problems are unlikely to recur. Further, while she has favorable character and employment records, those records are insufficient to establish a "whole-person" analysis supporting a favorable clearance action. 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 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

<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;

**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.

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JOHN GRATTAN METZ, JR  
Administrative Judge