



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-06943
	)	
Applicant for Security Clearance	)	

**Appearances**

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

October 26, 2011

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 24 March 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guidelines F, Financial Considerations and E, Personal Conduct.<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 21 July 2011. DOHA received the transcript 29 July 2011.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-16 and Applicant exhibits (AE) A-O.

<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, except for SOR 1.f—a \$252 judgment that he claimed, without corroboration, to have paid. He is a 46-year-old team lead employed by a defense contractor since July 2009. From January 2007 to July 2009, he was unemployed after resigning from his Government employment as a security specialist. He has not previously held an industrial clearance, but held a clearance from May 2000 to October 2006 when he was employed as a security specialist by the Government. He also held a clearance while in the military from November 1990 to August 1998. He received an honorable discharge (AE F).

Applicant has an extensive history of financial problems dating back to 1996 when he was in the U.S. military. His financial problems have been marked by numerous delinquent accounts, several administrative actions by employers, and two crimes.

In May 1996, Applicant was counseled by the military for writing non-sufficient fund checks (1.m). In August 1996, he was counseled by the military for using his Government credit card for personal expenses (1.n). Later in August 1996, he was reprimanded by the military for using his Government credit card for personal expenses and exceeding his credit limit. His account was temporarily suspended (1.o).

In November 1998, Applicant was charged with robbery and several other crimes, and was later convicted in March 1999 of theft, robbery, and second degree assault. Two of the three offenses of which he was convicted were felonies, as were two of the three remaining charges, which were nolle prossed. He was sentenced to one year in jail, suspended, and placed on a year's probation. He also paid \$3,000 restitution and completed 300 hours of community service (1.p).<sup>3</sup>

After leaving the military in August 1998, Applicant became a civilian employee of the Government, in November 2005, Applicant was charged with theft of Government funds when he was caught on closed-circuit television taking cash from the coffee mess. He was placed in pretrial diversion, completed the requirements of the diversion program, and the charge was dismissed (1.r). In November 2005, his Government credit card—which had been used for non-travel-related expenses—was suspended for nonpayment. The misconduct evidenced in 1.r and 1.s caused his clearance to be revoked in October 2006 (2.f). The clearance revocation effectively caused his voluntary resignation from Government employment in January 2007 (AE I).

In an October 2001 clearance application, Applicant deliberately omitted any reference to the November 1998 felony charges (2.b and 2.c). In May 2002, he falsely swore a statement about the circumstances of the 1998 charges (2.d). In November 2005, he deliberately misstated the circumstances of the November 2005 criminal charges to criminal investigators for the Government (2.e).

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<sup>3</sup>He was also charged with violating his probation, but the charge was later dismissed (SOR 1.q.)

Besides the misconduct cited above, the SOR alleges, and Government exhibits confirm, 12 delinquent debts totaling over \$24,000; he admits 11 debts totaling nearly that much. The delinquent accounts consist of eight collection accounts, two judgments (one of which was being paid by garnishment), one charged-off account, and one 180 days past-due account).

Applicant attributes his financial problems to his January 2007-July 2009 unemployment. His current employment does not pay enough for him to begin to address his debts. He had been making nearly \$70,000 per year in his Government job. He made just over \$12,000 in 2010 (AE J).

His character references (AE A-E) consider him honest and trustworthy. However, none of them appears to be aware of the SOR allegations.

### **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 guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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, 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>4</sup>

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's debts go back several years, and he currently lacks the means to address them.<sup>5</sup>

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.<sup>6</sup> Applicant's January 2007-July 2009 unemployment was effectively the result of his misconduct in November 2005. And while Applicant characterizes his financial problems as emanating from his unemployment, the misconduct that got his clearance revoked demonstrated that he was having financial problems before he lost his clearance and had to resign from his Government job. His Government credit card was suspended for nonpayment and using the card for unauthorized purchases—something he had been counseled for while in the military. He has not acted responsibly in addressing his debts.<sup>7</sup> He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control.<sup>8</sup> He has not made a good-faith effort to satisfy his debts.<sup>9</sup> I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicants are expected to give full and frank answers during the clearance process. Although Applicant disclosed that he had financial problems, he failed to report his 1998 felonies on his October 2001 clearance application, and provided false and misleading information during subject interviews in May 2002 and November 2005. This conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.<sup>10</sup>

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information

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<sup>5</sup>¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

<sup>6</sup>¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>7</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>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;

<sup>9</sup>¶ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>10</sup>¶ 16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

until his subject interview, and then he provided misleading information.<sup>11</sup> Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel, particularly with his background as a Government security specialist. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. I resolve Guideline E against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-s:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-f:	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

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<sup>11</sup>¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;