



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



In the matter of:	)	
	)	
XXXXX, Xxxxxx Xxxxxx	)	ISCR Case No. 10-09611
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

03/26/2012

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

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

On 23 September 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 21 December 2011, and I convened a hearing 24 January 2012. DOHA received the transcript (Tr.) 31 January 2012.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-B.

<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 financial allegations of the SOR. She is a 31-year-old senior technical specialist employed by a defense contractor since July 2008 (GE 1; Tr. 28). She has also been working a part-time network engineer job since March 2009. She took the second job specifically to help her address her financial problems (Tr. 27). Applicant requires a clearance for her full-time job but not for her part-time job. Applicant graduated from high school in August 1998. She served in the U.S. military from March 1999 to September 2003, during which time she held a clearance. She successfully transferred that clearance when she entered the private sector, and seeks to retain it.

The SOR alleges, and Government exhibits substantiate, four delinquent debts totaling nearly \$11,000. The debts consist of a \$6,000 state tax lien (SOR 1.a), a \$3,900 charged off account that Applicant disputes (SOR 1.b), a \$900 credit card collection account (SOR 1.h) that Applicant settled in October 2011 (Answer), and a \$100 medical collection account that Applicant documented paying in November 2009 (Answer). Applicant documented her dispute of SOR debt 1.b in August 2011 (GE 2). The credit bureau updated this account in September 2011, and indicated the account would be deleted by January 2012 (Answer). Applicant's January 2012 credit report (AE B) shows the account has been deleted.

The largest of the four debts (SOR 1.a) is a \$6,000 state tax lien filed in December 2007 because Applicant allegedly failed to file her 2003-2006 state income tax returns (SITR)(SOR 1.c-1.f). Applicant served on active duty in the military assigned to a base in a state not at issue in this case. While Applicant was in the military, she timely filed her federal income tax returns (FITR). She did not file SITR because the military told her that her home of record (the family home where she lived with her parents) exempted her military income from taxation. When Applicant left active duty in September 2003, she moved to the state at issue, but worked in a neighboring state and was having state income taxes withheld for that state. She was unaware that she had to file a SITR in the state where she lived. She was 23-years-old at the time and concedes that she was not very financially sophisticated. Consequently, she did not file the proper SITR for the last three months of 2003, for 2004 and 2005, and for the first six months of 2006. Applicant also allegedly failed to file this same state's 2007 income tax return (SOR 1.g). However, Applicant moved back with her parents from July 2006 to March 2008 (GE 1), and properly filed her 2007 SITR there in March 2008 (Answer). Since resolving her state tax lien, she has timely filed her SITR and FITR.

Aside from her immaturity, Applicant attributes her financial problems to a problem she had with alcohol abuse. Her alcohol problem manifested itself by a DUI in April 2005 in the state she moved to after leaving the military, and another in June 2006, after she moved back home to live with her parents. Among the other consequences of these two DUIs, Applicant attended an inpatient treatment program in March and April 2007. She has consumed no alcohol since.

Applicant discovered the tax lien, as well as her other delinquent accounts, when she pulled her credit report to help her prepare her March 2010 clearance application (GE 1). She reported a number of delinquent accounts on her application. Although she did not pursue credit counseling, she conducted internet research to get information on how she should proceed to address her delinquent accounts. The credit reports in the record (GE 3, 4; AE B) reflect her efforts since March 2010 to straighten out her finances. Most of the entries are positive, and each report documents the progress she made settling accounts that were not alleged in the SOR. By the time the SOR was issued, Applicant had begun the formal process to dispute SOR debt 1.b (August 2011), had begun collecting the documentation necessary for her to file her late Sitr (August 2011), and had paid SOR debt 1.i (November 2009). By the time she answered the SOR, she had received notice that SOR debt 1.b would be removed from her credit report by January 2012, had filed her late Sitr (October 2011) and been informed by the state that the lien had been released as satisfied (October 2011), and had settled SOR debt 1.h (October 2011). Applicant earns nearly \$100,000 per year, and has no difficulty meeting her current expenses. She has \$6,000 in two savings accounts.

### **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>

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## Analysis

The Government established disqualifying conditions under Guideline F, but Applicant mitigated the security concerns. Applicant's immaturity and her alcohol problem contributed to her neglecting her finances, and numerous accounts fell delinquent.<sup>4</sup> However, when Applicant completed her most recent clearance application, she pulled her credit report, discovered the delinquent accounts, and began addressing them long before the SOR was issued.

Applicant meets most of the mitigating factors for financial considerations. Her financial difficulties were limited and recent, but occurred under a confluence of circumstances not likely to recur.<sup>5</sup> Initially, alcohol consumption is voluntary, but for persons who develop a problem, it becomes a circumstance beyond their control. After Applicant completed inpatient treatment, she began to put her life together, and when she learned of her delinquent accounts, began to address them well before the SOR was issued.<sup>6</sup> Although Applicant has not received financial counseling, she did her own internet research to learn what to do, and there are clear indications her financial problems have been brought under control.<sup>7</sup> Applicant started addressing her delinquent debts when she became aware of them, and at each point when she came in contact with the Government about her finances, she had made considerable progress until by the time of her hearing she had resolved all the debts alleged in the SOR. This conduct constitutes a timely, good-faith effort to address her delinquent debts.<sup>8</sup> Applicant has significant positive monthly cash flow, and there is no indication of any problem staying current on her regular expenses. I conclude Guideline F for Applicant.

## Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-i:	For Applicant

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<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 (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 debt;.

## **Conclusion**

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge