



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| XXX, XXXXXXXX                    | ) | ISCR Case No. 11-01937 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

08/08/2012

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 January 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 13 April 2012, and I convened a hearing 11 May 2012. DOHA received the transcript 21 May 2012.

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

<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 all the SOR allegations except SOR 1.a, 1.e, and 1.k-1.l. She is a 40-year-old security technology assistance center specialist employed by a defense contractor since June 2010. She seeks reinstatement of the security clearance she held in previous jobs. She was briefly unemployed February-June 2010, after leaving her job for "personal/medical" reasons (GE 1). She also reported being unemployed April-July 2009, having left two full-time positions in April 2009 to start job training for another job.

Applicant has an extensive history of financial problems. In a subject interview in August 2008, conducted during an earlier background investigation, she was confronted with two delinquent accounts totaling about \$13,000. In June 2004, she had taken out a \$10,000 loan from her credit union to make a down payment on a house purchase.<sup>3</sup> The loan became delinquent in 2005 because she bought another home, and her mother became ill and she had to help her financially. She entered into a repayment agreement with the collection agent in June 2008, and at the time of her August 2008 subject interview had made all her payments and planned to continue making payments until the account was paid (GE 2). Based on her representations, she obtained or retained her clearance.

Applicant did not complete payments on the credit union account as scheduled. She paid until 2007, but stopped because her husband's business was not doing well and hers was the only income available to pay the bills. She reported this delinquent account during a subject interview in October 2009, relevant to a new background investigation. As with her August 2008 interview, by the time of her October 2009 interview, Applicant had reached a repayment agreement with the creditor (in this case, the credit union directly), and was making scheduled payments. Again, she kept her clearance.

However, her financial problems kept returning. As noted above, she was unemployed April-July 2009 when she left two jobs to begin job training for a third. She and her husband separated in about September 2009 because of criminal allegations against him. She was also injured in an automobile accident in June 2011 that was not her fault. Applicant has an attorney representing her on that case. She expects to obtain a financial settlement, but at the time of the hearing had not reached one.

Spring 2009 was a tumultuous time for Applicant. At the time, she was working as a security officer at two full-time jobs. She worked a morning shift at one job, and an

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<sup>3</sup>In September 2004, she also opened a \$3,000-limit credit card account, because her mortgage lender wanted her to have another credit account in good standing to establish her credit. The account became delinquent in 2005 because she bought another home, her mother became ill, and she had to help her mother financially. She entered into a repayment agreement with the collection agent in June 2008, and at the time of her August 2008 subject interview had made all her payments and planned to continue making payments until the account was paid. She appears to have paid this account as scheduled.

evening shift at the other. In April 2009, she was terminated from one of her two full-time security officer positions (GE 7).

Company records (GE 7) show that Applicant called off (phoned in that she was not going to make her shift) on 17 March 2009 (a scheduled workday), and failed to report to work on 19 and 20 March 2009 (her other scheduled workdays that week). There is no indication that she told her supervisor that she was never coming back to her job. She missed her scheduled workdays the following week (24, 26, 27 March 2009), and was asked by her supervisor to provide documentation for her absenteeism. Again, there is no indication that she told her supervisor that she was not returning, or that she should be removed from the schedule. On 30 March 2009, she told her supervisor she would provide a letter of resignation. However, she did not. She missed her scheduled workdays for a third week (31 March, 2-3 April 2009). On 6 April 2009, her supervisor left her a voice message on her cellphone, requesting a return call. When she did not, the company terminated her.

Applicant's testimony (Tr.48-53) largely corroborates the company's records, except that she claims that she resigned from her job and submitted a letter of resignation. One of her witnesses claims he helped her draft her letter, but neither of them produced a copy of the letter. In any event, Applicant disappeared precipitously from this job after calling off on 17 March 2009. She tries to ascribe her actions as her reaction upon learning of her husband's alleged sexual abuse of her teen-age daughter (Tr. 48). However, during her September 2010 subject interview, conducted as part of her current background investigation, she stated (GE 2) that she left this employment because she had taken a new job and had to take certification courses for it. She later claimed to have resigned, but did not corroborate that claim. Around the same time, her teenage daughter alleged that her husband had sexually abused her since about August 2004. He was charged in May 2009, but the prosecutor dismissed the charges in July 2009. It appears that only then did Applicant and her husband separate. She moved out of the marital home in September 2009. Their divorce is pending.

When Applicant left the marital home, her husband had agreed to continue making the mortgage payments. However, he did not do so and the house is now in foreclosure. The purchase history of this house highlights some of Applicant's financial issues. Applicant and her husband bought this house in March 2004. He is on the deed, but because his credit was not good when they bought the house, only Applicant's name is on the mortgage. Applicant has a divorce lawyer, and resolution of the property issue is one of the issues being negotiated. Applicant's husband is trying to modify the mortgage to relieve Applicant of her financial responsibility for the house, but it is not clear that he has the income to accomplish that as part of the divorce settlement.

The SOR alleges, and Government exhibits (GE 3, 5) substantiate, 13 delinquent debts totaling nearly \$89,000. The four debts Applicant admits total just over \$76,000. \$75,000 of the debt is for delinquent first and second mortgages on a house that is now in foreclosure.

Applicant's exhibits (AE) B-M reflect Applicant's efforts to resolve SOR debts 1.a-1.j, and 1.m. She appears to have paid some account, settled others, and begun repayment plans on most of the rest.<sup>4</sup> The two debts she has not addressed are the two mortgages that remain as part of her unresolved divorce proceedings. Applicant's husband is trying to get a loan modification to put the mortgages solely in his name, but he has been unemployed the last two months. However, he was recently called for a job interview.

When Applicant completed her most recent clearance application in August 2010, she disclosed her financial problems. However, she did not disclose that she had been terminated from her job in April 2009. In her subject interview in September 2010, she maintained her claim that she had resigned from that job.

Applicant does not appear to have had financial counseling. She has favorable work and character references (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 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, 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.

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<sup>4</sup>However, one of the settled accounts (SOR 1.b) is the credit union loan that was first delinquent in 2005. Despite her sporadic payments in the past, the balance had risen as high as \$10,500, and was still \$9,200 when alleged in the SOR.

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>5</sup>

### Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. Applicant has a history of financial difficulties going back several years.<sup>6</sup> Indeed, although earlier adjudications of her financial situation were apparently resolved in her favor, her delinquent accounts were the subject of clearance adjudications on at least two other occasions before an SOR was issued in this case. She was clearly on notice of the Government’s concerns about delinquent financial obligations. Once the Government established the indebtedness, the burden shifted to Applicant to show her clearance worthiness, which she was unable to do.

The mitigating factors for financial considerations provide little help to Applicant, certainly not enough to fully mitigate the security concerns. Her financial difficulties are both recent and multiple, and only partly due to unusual circumstances not likely to recur.<sup>7</sup> Similarly, her financial problems are only partly due to circumstances beyond her control. Buying a house with a borrowed down payment and solely in her name because of her husband’s credit was a choice she and her husband made. Leaving two jobs in April 2009 to go for training on a job that did not begin until July 2009 was a choice. Leaving that job in February 2010 for otherwise unspecified “medical/personal” reasons was a choice. Separating from her husband because of the sexual abuse allegations constitutes a circumstance beyond her control, although waiting until the charges had been dismissed to do so seems unusual. Perhaps her efforts to deal with most of her debts has been responsible,<sup>8</sup> but expecting her husband to make the payments, given his past credit history and employment record was not. Further, Applicant has been under varying degrees of financial pressure since 2005. She has not had any financial counseling, and the mortgages—which are still in her name only—constitute the overwhelming majority of her delinquent debt. Consequently, she cannot show that she is gaining control over her finances<sup>9</sup> or will be able to establish and meet payment arrangements for her delinquent debts, if the mortgages are not transferred to her

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<sup>5</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup>¶19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>7</sup>¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>8</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>9</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;

husband.<sup>10</sup> Given that he was unemployed at the time of the hearing, that seems unlikely to occur in the reasonably foreseeable future. I resolve Guideline F against Applicant. Assessment of the whole-person factors yields no different result.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Standing by itself, the fact that Applicant effectively quit her job without notice in April 2009 would probably not have sufficient security significance to warrant denial of her clearance. However, coupled with her failure to disclose the circumstances of her termination on her August 2010 clearance application and her insistence in her September 2010 subject interview that she resigned from the job—which I find not credible given the company records—I find that Applicant engaged in questionable conduct and attempted to minimize or misrepresent that conduct.<sup>11</sup> Consequently, the burden of persuasion shifted to Applicant to refute or mitigate the Government’s information.

In the face of company records showing that, as of 6 April 2009, Applicant had missed nine scheduled days of work without adequate explanation, and had talked to her supervisors about resigning but had not submitted a resignation letter. It was her burden to document both that she submitted a resignation letter and that she had submitted it so the company should have received it by 6 April 2009. Without the letter, she cannot meet that burden. She has failed to document that the letter was submitted at all. A late letter might have made her claim of ignorance of the company’s termination more plausible. As it is, I find her testimony on the issue of actually sending a resignation letter not credible.

None of the mitigating conditions apply. Applicant made no effort to correct her applications before she was confronted with the information during her September 2010 subject interview, and her omission was not significantly aided by incorrect advice given to her about completing her clearance applications. The whole-person factors require no other result, as there is no evidence in the record about Applicant that could overcome the negative inferences to be drawn by her conduct. I resolve Guideline E against Applicant.<sup>12</sup>

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<sup>10</sup>¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>11</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. . . ; (b) deliberately providing false or misleading information regarding relevant facts to an . . . investigator . . . ;

<sup>12</sup>I find SOR 2.d for Applicant because her bad check arrest in November 1991 and her clearance suspension in December 1991 have no independent security significance beyond their relevance as proof of her financial problems.

### **Formal Findings**

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraphs a-j:        | For Applicant     |
| Subparagraphs k-l:        | Against Applicant |
| Subparagraph m:           | For Applicant     |
| Paragraph 2. Guideline E: | 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