



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



In the matter of: )  
)  
) ISCR Case No. 11-06447  
)  
Applicant for Security Clearance )

**Appearances**

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

February 3, 2012

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 15 August 2011, the Defense Office of Hearings and Appeals (DOHA) sent a Statement of Reasons (SOR) to Applicant raising security concerns under Guideline F (Financial Considerations).<sup>2</sup> Applicant timely answered, requesting a hearing. DOHA assigned the case to me 6 October 2011, and I convened a hearing 1 November 2011. DOHA received the transcript (Tr.) 8 November 2011.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-E. AE E was timely received post-hearing.

<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 financial allegations, except for SOR 1.f. He is a 27-year-old computer support technician employed by a defense contractor since October 2010. He has not previously held a clearance. He reported his financial problems on his January 2011 clearance application (GE 1).

The SOR alleges, and government exhibits (GE 1-4) confirm, six delinquent debts totaling nearly \$25,000. The past-due mortgage at SOR 1.e went into foreclosure, so the delinquent debt at issue is just over \$88,000. Applicant denied SOR debt 1.f (\$205), claiming it was paid, and provided proof that he paid the debt in August 2011, after receiving the SOR (AE E).

Applicant attributes his financial problems to his failed attempt, with his partner, to buy and fix houses for a profit. Neither he nor his partner had any experience with real estate, but Applicant's associate at work (who recommended the venture to him) promised to help him locate suitable properties and tenants for the repaired houses. The venture was briefly successful, but the declining housing market and economy soon meant that Applicant and his partner could not get or keep suitable tenants for the houses. Applicant and his partner had used their personal credit cards to fund the repairs on the houses. Without any rental income, they could not keep up the payments on the cards. The six debts in the SOR consist of four delinquent credit cards (SOR 1.a-1.d), a then-past-due, now-foreclosed mortgage (SOR 1.e), and an unpaid parking ticket (SOR 1.f).

During a subject interview in February 2011 (GE 2), Applicant acknowledged all six debts alleged in the SOR and stated his intent to arrange repayment plans with all the creditors. At hearing (Tr. 36), he testified that he had not entered into repayment plans for SOR debts 1.a, 1.b, and 1.e. Post hearing, he documented an \$80 payment in November 2011 on SOR debt 1.a (AE E) and a \$60 payment on SOR debt 1.b in November 2011 (AE E). But he made no claim and provided no corroboration that these payments were part of a repayment plan agreed to by the creditors. Nor did he provide any proof that any plan existed before November 2011.

Applicant claimed to have entered into repayment plans with the creditors for SOR debts 1.c and 1.d (Tr. 36). But while he corroborated an \$80 electronic payment on SOR debt 1.c in October 2011 (AE A, B), a \$50 electronic payment in October 2011 on SOR debt 1.d, and a \$50 pending electronic payment for November 2011 on SOR debt 1.d (AE A, C), he did not corroborate that these payments were part of a repayment plan agreed to by the creditors.<sup>3</sup> Similarly, his post hearing submission (AE E) shows only that he paid his parking ticket (SOR 1.f) in August 2011, after he received the SOR. Finally, he provided no corroboration from the creditor in SOR debt 1.e that Applicant had no further liability on the foreclosed mortgage.

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<sup>3</sup>And, absent any evidence to the contrary, the October 2001 payments suggest that the repayment plans were entered into only after Applicant received the SOR in August 2011.

Applicant's work reference (AE D) considers Applicant reliable and trustworthy, and he would trust him with classified information.

### **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 judgment, 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>4</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Setting aside for a moment the wisdom of Applicant's real-estate investments, the speed with which the enterprise collapsed suggests that Applicant was not really prepared for his venture.<sup>5</sup> Nevertheless, Applicant's case fails largely because he did not corroborate the current status of his delinquent accounts.

This case falls somewhat outside the normal outline for financial cases, so the mitigating factors for financial considerations provide less guidance than usual. However, Applicant's financial difficulties are both recent and multiple, although largely

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

<sup>5</sup>¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

through events unlikely to recur.<sup>6</sup> Again, setting aside the wisdom of his investment plan, the decline in the housing market was largely beyond his control. Still, he has not shown that he acted responsibly in addressing his debts.<sup>7</sup> He was aware of his delinquent debts when he applied for his clearance in January 2011 and acknowledged his debts and the need to address them during his February 2011 subject interview. However, the evidence suggests that he took no steps to pay his debts or arrange repayment plans until after he received the SOR. At best, he can show payment of one \$200 debt after the SOR, maximum payments of \$180 on two accounts just before the hearing, and payments of \$140 on two other accounts after the hearing. These payments address less than \$17,000 of the alleged debt and establish no track record to suggest that Applicant can see these debts through to resolution. Further, without proof that the creditor on the mortgage has foregone its right to collect, or that Applicant can deal with any imputed income due to forgiveness of that debt, I cannot conclude that his financial problems are under control,<sup>8</sup> or that he has made a good-faith effort to satisfy his debts.<sup>9</sup> I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	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>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.