



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXX, Xxxxxx Xxxxxxx ) ISCR Case No. 11-10633  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

01/23/2013

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 22 May 2012, the Department of Defense (DoD) 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 before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 29 November 2012, and I convened a hearing 20 December 2012. DOHA received the transcript (Tr.) 3 January 2013.

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

<sup>2</sup>DoD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 SOR allegations. He is a 29-year-old program director employed by a defense contractor since February 2011. He has not previously held a clearance.

The SOR alleges, and Government exhibits establish, four delinquent debts totaling nearly \$129,000. Three of the debts date to 2006, and are on the verge of aging off Applicant's credit report.

When Applicant went to college in fall 2001, he decided to finance his school and living expenses through two credit cards and a signature loan he obtained from his credit union. He was a mediocre student, and spent time under academic warning, several probationary periods, and two academic suspensions (GE 4).

Around fall 2004, Applicant decided that he did not want to pursue the degree he started on, but wanted to major in finance, a degree that was available in the college's management school. Applicant claims, without corroboration, that there was a time when his college transcript reflected that he was in the management school. However, Applicant failed to comply with college requirements for entering management school. Admission to management school required a formal application and screening interviews with management professors.

Because Applicant failed to comply with the requirements for admission to the management school, the college placed Applicant in the school of humanities and social sciences. Applicant either did not know this, or did not realize its significance, until the beginning of the spring 2006 term. Applicant expected to graduate in May 2006, and had already obtained employment contingent on his getting his finance degree. Applicant learned that he would not be getting his finance degree because he had not been properly admitted to the management school. Moreover, he could not transfer to the management school and retake the finance courses because he had already taken them once. Faced with the practical reality of starting over in a major, Applicant did very poorly during the spring 2006 term. Applicant was on non-academic probation from July 2006 until the beginning of the spring 2007 term in January 2007. However, he did poorly that term, and was placed on his second academic suspension. Applicant stopped taking classes altogether. He eventually returned to school, and was awarded his degree in August 2012.

Applicant's financial problems began when he did not graduate in May 2006 as he expected. The job he had taken was contingent on his graduating with a finance degree. By spring 2007, Applicant was terminated from the job. He stopped paying on his credit cards and the signature loan. He received dunning letters from the credit union, to which he did not respond. Applicant made no effort to resolve the debts with the credit union, and the debts were eventually sold to a collection agent, and may have been resold several times since.

In October 2010, Applicant engaged in settlement discussions with the successor in interest to the credit union credit cards (SOR 1.a and 1.b)(AE D). In October 2010, the successor creditor offered to settle its nearly \$68,000 claim for just over \$15,000, payable in three payments (AE E). However, the creditor would not prove to Applicant's satisfaction that it legally owned the two debts, or guarantee him that it would correct his credit reports to reflect his payments. Consequently, Applicant was unwilling to wire the money to the creditor. They have been at an impasse since.

Similarly, he is at an impasse with the collection agent for the medical debt at SOR 1.c, because it has not proven to his satisfaction that it legally owns the debt. Nevertheless, Applicant acknowledges that he incurred the original debt.

Applicant claims, without corroboration, that he contacted the credit union to address SOR debt 1.d, but the credit union would not accept payment on the account because it had already charged off the account. Applicant claimed, again without corroboration, that the credit union would not give him a letter to that effect.

In April 2011, Applicant hired a credit repair law firm (AE F) to dispute the credit entries that support the SOR. The company sent each listed creditor a letter, but does not document the responses received, if any. It is also not clear whether the law firm has provided any financial counseling. Applicant claims, without corroboration, that he has received financial counseling. He also claims, but has not documented, that he has the funds in the bank to pay any settlement he may reach with his creditors. He claims that the law firm has advised him not to pay the creditors unless they can prove their legal right to collect to his satisfaction. His current plan is to rely on the statutes of limitations (AE B, H) to forestall any suits his creditors may bring, and to wait for these delinquent debts to age off his credit reports.

Applicant's four work and character references (AE A) consider him honest and trustworthy, and recommend him for his clearance. Except for the debts alleged in the SOR, his credit accounts are current.

### **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 has nearly \$129,000 in delinquent debt that he voluntarily incurred and has yet to resolve.<sup>4</sup> Moreover, the delinquent debt is directly attributable to Applicant's intransigence or obliviousness in dealing with his college. The person most responsible for knowing and understanding the college's requirements for graduation is Applicant. Furthermore, Applicant continued his intransigence dealing with his creditors. He has little leverage bargaining with the creditors, yet he was offered a substantial discount to settle the two credit cards. He refused to close the deal unless the creditor proved its ownership of the debts to his satisfaction. However, it was well within Applicant's power to resolve the two debts without any documentation from the creditor.

Applicant's reluctance to wire the payment to the creditor without some documentation from the creditor is understandable, but he had the power to bind the creditor through his unilateral action. Had Applicant accepted the creditor's offer in writing (not electronically), sending the agreed payment by certified check and noting that it was for settlement in full, the creditor would be bound by its offer if it cashed the check. The creditor would then be obligated to report the accounts as settled to the credit reporting agencies. If the creditor failed to do this, Applicant would have the documentation necessary to force the credit agencies to remove the accounts from his credit reports—a better result than having the creditor report the accounts as settled.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent and not infrequent, although they may be unlikely to recur.<sup>5</sup> The circumstances that caused Applicant to not graduate as

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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;

<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 . . . ;

anticipated and to lose his contingent employment were certainly within his control. He cannot be considered to have acted responsibly in addressing his debts under the circumstances because the debts were due to his own conduct.<sup>6</sup> Further, while his 2010 efforts to settle the two credit card accounts shows some good faith in attempting to resolve those debts, his failure to document any follow-through or to use any common sense in paying the accounts undercuts his claim to rehabilitation.<sup>7</sup>

The concern with Applicant is that while he credibly stated his intent to resolve these debts, he now appears set on outlasting his creditors until the accounts age off his credit reports. That action may be lawful, but does not constitute a plan for resolving his debts. He has not produced a budget, or documented that he has received financial counseling. He certainly has not demonstrated that these delinquent debts are being resolved.<sup>8</sup> Further, while he has favorable character and work references, those references are insufficient to establish a “whole-person” analysis supporting a favorable clearance action. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:           AGAINST APPLICANT

Subparagraphs a-d:           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 (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;