



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



In the matter of: )  
XXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 12-09865  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L'ei Garcia, Esquire, Department Counsel  
For Applicant: *Pro Se*

03/27/2017

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 20 June 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing; however, Department Counsel requested a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 11 April 2016 and I convened a hearing 18 May 2016. DOHA received the transcript 26 May 2016.

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<sup>1</sup>Consisting of the transcript (Tr. I), Government exhibits (GE) 1-4, hearing exhibit (HE) I-II, and Applicant exhibits (AE) A-B. AE A-B were timely received post hearing. The record closed on 10 June 2016, when Department Counsel stated no objection to AE B.

<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 admitted SOR financial allegations 1.a-1.d. She denied the remaining allegations. She is a 46-year-old project administrator employed by a defense contractor since September 2009. She has not previously held a clearance. She married in April 2002, separated from her husband in May 2006, and divorced him in November 2009 (GE 1; Tr. 32). She discovered a year into their marriage that he had not filed his taxes for the last six years (Tr. 31). In 2010, she was treated for cancer.

The SOR alleges, Government exhibits (GE 1-4) substantiate, and Applicant admits, filing for bankruptcy protection on four occasions (SOR 1.a-1.d). Applicant first filed for Chapter 13 bankruptcy protection in September 2009 (SOR 1.a). The petition was dismissed in October 2011, although Applicant received the mandatory financial counseling during the pendency of this bankruptcy (GE 4). Applicant filed for Chapter 7 bankruptcy in September 2012 (SOR 1.b), and was discharged of about \$20,000 in marital, post-divorce, and medical debt. She asserts that SOR debts 1.g-1.k, 1.aa, and 1.cc-1.dd were discharged in this bankruptcy (Tr. 33-35).<sup>3</sup>

However, it appears that not all of her debt was included in her Chapter 7 petition, and she acquired new debt. She filed again for Chapter 13 protection in August 2013, and the petition was dismissed in October 2013 (SOR 1.c). She re-filed a Chapter 13 petition in November 2013 (SOR 1.d), but the case was dismissed in June 2014 when she could not keep up the payments (Tr. 36-38). She tried again in September 2014 but the petition was dismissed in February 2015 because she did not start the required automatic payments once she received notification that her plan had been confirmed (Tr. 38). Finally, she filed another Chapter 13 bankruptcy petition in March 2016, with about \$10,000 in debt, \$5,000 of which was from her marriage (Tr. 39).<sup>4</sup>

Applicant documented that the February 2011 state tax lien (SOR 1.e) was released in January 2015 (Tr. 40041; AE B). She claimed that she was unable to locate SOR creditors 1.f and 1.l (Tr. 43), but provided no evidence of her efforts to locate the creditors. She stated that she could provide proof of payment for SOR 1.bb (Tr. 45), but did not do so.

Applicant received credit counseling through her bankruptcies. She claimed to have, but did not provide, a budget to document her claimed \$700 positive monthly cash flow. She provided no work or character references, or any evidence of community involvement.

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<sup>3</sup>Applicant did not supply a copy of her Chapter 7 bankruptcy, so it is impossible to confirm that claim. Her June 2016 credit report (AE A) confirms that SOR debts 1.i, 1.k, 1.m-1.n, and 1.r-1.s were discharged in a Chapter 7 bankruptcy. The remaining debts were not so clearly resolved.

<sup>4</sup>Although not alleged in the SOR, these latter two bankruptcy petitions are relevant on the merits to demonstrate Applicant's ongoing problems getting her finances in order. Although not a complete record of the debts included in these petitions, Applicant's June 2016 credit report reflects several debts that were included in a Chapter 13 bankruptcy petition (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 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, 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. 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 failed to fully mitigate the security concerns. Assuming for a moment that her financial situation coming out of her divorce warranted her first two bankruptcy filings, Applicant obtained a Chapter 7 discharge in December 2012, giving her a new financial start. Yet, she has filed for Chapter 13 bankruptcy protection four times since August 2013, at least two of which were dismissed for her failure to make her plan payments. She provided no documentation of her March 2016 filing, undertaken two months before her hearing.

Beyond that, her documentation (AE A) only confirms the discharge of seven of the 22 SOR debts. She also documented the release of the February 2011 state tax lien. However, she has not documented three other debts that were not in her Chapter 7 petition.

Applicant only partially meets the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and have not ended, so how can

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

they be considered unlikely to recur.<sup>6</sup> Even assuming that her initial financial problems were due to circumstances beyond her control, and the first two bankruptcies a responsible means of dealing with those debts, she has not demonstrated that her ongoing problems are due to circumstances beyond her control, and having not yet begun a successful Chapter 13 plan, she cannot be said to be dealing with the later debt responsibly.<sup>7</sup> Although Applicant has received credit counseling, she has not established that all the debts she claims were in her Chapter 7 petition were resolved, and certainly the debts that have comprised her Chapter 13 petitions after August 2013 have not been resolved.<sup>8</sup> Moreover, she did not provide any documentation of her March 2013 petition to show what the plan might look like to constitute a good-faith effort to satisfy them.<sup>9</sup>

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.<sup>10</sup> Applicant's efforts to date might have constituted such a plan, but for the shortcomings of her documents. Moreover, the absence of work or character references precludes a "whole-person" analysis arguing for granting her clearance notwithstanding her financial issues. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Subparagraphs e, i, k, m-n, r-t	For Applicant
Subparagraphs f-h, j, l, o-q, u-dd	Against Applicant

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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.

<sup>10</sup>ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

### **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