



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 14-06892
	)	
Applicant for Security Clearance	)	

**Appearances**

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

11/09/2016

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 June 2015, 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 16 August 2016, and I convened a hearing 22 September 2016. DOHA received the transcript (Tr.) 30 September 2016.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-7 and Applicant exhibits (AE) A-H. AE H was timely received post-hearing. The record in this case closed 7 October 2016, when Department Counsel indicated no objection to AE H.

<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 the SOR allegations, except for SOR 1.d. He is a 49-year-old manager employed by a defense contractor since May 2012. He has been married since August 1995, and has two children. He served on active duty with the United States (U.S.) military from June 1990 to July 2011, retiring in paygrade O-5. He seeks to retain the clearance that was issued to him in August 2003, and taken with him into retirement (GE 1).

The SOR alleges, and Government exhibits (GE 2-4) establish, five delinquent debts totaling over \$241,000. Applicant's January 2016 credit report (GE 2) states that SOR debt 1.e was paid in September 2014. Nearly \$230,000 of the debt consists of delinquent first and second mortgages (SOR 1.a-1.b). Two other delinquent consumer accounts total nearly \$10,000 (SOR 1.c-1.d). Applicant disclosed his delinquent first mortgage for which he was seeking a loan modification, and a delinquent consumer account (not alleged in the SOR), for which he had just entered into a repayment plan, on his November 2013 clearance application (GE 1).

Applicant discussed the SOR debts with a Government investigator during a May 2014 subject interview (GE 7). He told the investigator that he began pursuing a loan modification on his mortgage in 2011, and on the recommendation of the lender, stopped making payments for about six months. While the modification was pending, the loan was sold to the current lender. Applicant claimed that he obtained a loan modification from that lender, effective in January 2012, that reduced the monthly payment to \$1,700. He stated he would look into the other SOR debts and address them. However, he did not.

Applicant and his wife bought a home in September 2005, financed with a 5-year interest only loan with a balloon payment (Tr. 53, 56-57). The monthly payment was \$2,330. In March 2009, Applicant sought to refinance the loan with the original lender to avoid the balloon payment (AE H).<sup>3</sup> That effort received no response. Applicant provided no information about what happened to the balloon payment in 2010. In February 2011, the successor-in-interest to the first mortgage offered to consider Applicant for a loan modification if he provided the required documentation by March 2011.<sup>4</sup> Applicant supplied the documents in late April 2011, and in November 2011, the lender denied Applicant's request for a loan modification for failing to provide the required documents.

Applicant's lender made the same offer to Applicant in March 2012, September 2012, and May 2013, to which Applicant made timely submissions without getting any response. In October 2013, the second successor-in-interest offered a loan modification

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<sup>3</sup>Unless otherwise cited, the loan modification time line discussed here is contained in AE H.

<sup>4</sup>The lender also told Applicant that his mortgage had to be in default before he could be considered for a loan modification (Tr 38-39).

to Applicant, to which he also made a timely submission without getting any response. He met with his lender at a loan modification informational event in April 2015 and asked for state mediation in May 2015.

In May 2015, Applicant filed for Chapter 13 bankruptcy protection, largely for the automatic stay of any potential foreclosure proceedings (GE 5). There were some technical difficulties with the filing, which was dismissed in December 2015. Applicant refiled his petition in March 2016 (GE 6), and the plan was still pending at the time of the hearing. Applicant's January 2016 credit report (GE 2) reflects that the past-due mortgage balance had grown to \$179,113 from the \$124,262 alleged in the SOR.

If approved, Applicant's plan requires him to make 12 monthly payments of \$2,000. Thereafter, Applicant must pay \$2,500 for another 48 months. Applicant made six \$2,000 payments between early May and early September 2016 (AE B). Applicant claimed (Tr. 43) that SOR debts 1.c and 1.d were included in both bankruptcy filings, but the bankruptcy documents indicate that only SOR 1.d was included in the petitions.

In addition, Applicant's lender offered him a trial loan modification in June 2016, conditioned on specified payments in July, August, and September 2016 (AE C). Applicant made the required payments (AE D), and is awaiting notification of the new loan payment.

Applicant attributed his delinquent debts to the nine months' unemployment he experienced after retiring from the military. At the time of his retirement, he had two job offers pending, but neither of the contractors obtained the Government contract which would have employed him (Tr. 33-35). However, Applicant also stated that his retired pay was adequate to keep up with his mortgage payments (Tr. 36).

In 2014, Applicant was making \$135,000 annually, plus another \$36,000 annually in retired pay. Applicant provided no work or character references or evidence of community and civic contributions. He has received no credit or financial counseling, beyond what is required for bankruptcy court.

## **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>5</sup>

### Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has nearly \$285,000 in delinquent mortgage debt that may soon be addressed with a loan modification, and another \$10,000 in consumer debt, only half of which may be addressed through a pending bankruptcy plan.<sup>6</sup> Applicant has been aware of the consumer debt since at least May 2014, when he discussed the debts with a Government investigator. Applicant documented no efforts to resolve these debts before including one of them in his May 2015 and March 2016 bankruptcy petitions, again after receiving the SOR.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent, and not infrequent; although to the extent that the financial problems were due to his unemployment they may be unlikely to recur.<sup>7</sup> That unemployment can certainly be considered beyond his control, but it is not entirely clear that he has acted responsibly in addressing his debt. Sometime after February 2011 (before he retired) he stopped paying his mortgage, freeing up at least \$2,330 in his monthly budget. He has not clearly explained why his other accounts fell delinquent when he retired without any income beyond his retired pay. Moreover, he obtained employment in May 2012, yet took no steps to address his commercial debt even after being confronted with those debts in May 2014.<sup>8</sup> This assumes that continuing to skip his mortgage payments for nearly five years while a series of lenders considered his loan modification requests was a reasonable course of action. In any

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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;

event, his failure to take any steps to address his consumer debt does not constitute a good-faith effort to pay his debts.<sup>9</sup>

The concern with Applicant is that while he now promises to address his delinquent debts, and may be close to receiving a loan modification to address his mortgages and a bankruptcy plan approval to resolve his outstanding consumer debt, those resolutions have been years in coming, and not all of the delay can be attributed to Applicant's unresponsive lenders. The Government is not the collection agent of last resort. The Government expects applicants to deal with their delinquent debts because of their legal and moral obligation to do so, not because they face the risk of adverse administrative action. He has not received credit or financial counseling, beyond that required for his bankruptcy filing. He has been making mortgage and bankruptcy payments for about five months, too early to conclude that his debt is under control.<sup>10</sup> Further, he provided no favorable character and work references to establish a "whole-person" analysis supporting a favorable clearance action.<sup>11</sup> Accordingly, I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
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Subparagraphs a-d:	Against Applicant
Subparagraph e:	For 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>9</sup>¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

<sup>10</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>11</sup>In addition, his credibility is seriously undercut by the fact that he told the Government investigator in May 2014, that he had obtained a mortgage modification and was current on the new, reduced payment, when that was manifestly untrue.