



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 15-03052
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin R. Dorsey, Esquire, Department Counsel  
For Applicant: Pro Se

03/27/2017

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

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

On 13 November 2015, the Department of Defense (DoD) issued an 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 7 June 2016, and I convened a hearing 31 August 2016. DOHA received the transcript (Tr.) 8 September 2016.

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<sup>1</sup>The record consists of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibit (AE) A. AE A was timely received post-hearing. The record closed 29 November 2016, when Department Counsel stated no objection to AE A. The filing deadline for the post-hearing exhibits was extended from 16 September 2016 when Applicant experienced a major medical incident just before the filing deadline.

<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 allegations 1.a, 1.c-1.d, 1.f, 1.k, 1.m, and 1.o-1.s. He denied the remaining financial allegations and paragraph 2.a. He is a 29-year-old desktop support provider employed by a defense contractor since May 2012. He seeks to retain the clearance he was issued while serving with the United States (U.S.) military overseas from November 2010 to December 2011.

He has been married for four years, and has a seven-year-old stepson and three-year-old daughter with his wife. He also has a five-year-old daughter who lives with her mother, for whom Applicant pays child support.

The SOR alleges, and GE 2-4 establish, 19 delinquent debts totaling nearly \$93,000. Applicant admits 11 debts totaling over \$54,000. He denied eight debts totaling almost \$39,000. On his 23 April 2013 clearance application (GE 1), Applicant falsely answered "no" to a series of questions designed to elicit whether he had any financial problems. Applicant knew at the time that he had delinquent accounts, but was unaware of the details. He knows the answer to the question should have been "yes" (Tr. 77-91).

Almost \$53,000 of the alleged debt is for six delinquent education loan accounts (SOR 1.a, 1.e, 1.g-1.i, and 1.n). Applicant claimed, but did not corroborate, that the loans at SOR 1.e and 1.g-1.i were current, and the loan at SOR 1.n had been rehabilitated. Applicant applied for a hardship deferment of education loans on 17 October 2016 (AE A), but the application does not make clear which of the alleged loans are covered by the application.

SOR debt 1.b is for past-due rent incurred when Applicant was ordered to active duty and deployed. A 23 October 2012 court case disposition (AE A) appears to confirm Applicant's testimony (Tr. 45) that the judge dismissed the financial claim against Applicant.

SOR debt 1.c is an automobile repossession. Applicant had a second repossession at SOR 1.f. SOR debt 1.d is a delinquent child support obligation being collected through garnishment since December 2015. A 29 November 2016 letter from the social services agency enforcing the garnishment order shows that Applicant's payments are current through September 2016, with a balance of \$4,547.29 (AE A; Tr. 51).

Applicant claimed, but did not corroborate, that he paid SOR debt 1.j in August 2015 (Answer; Tr. 59-61). He was not sure if he had contacted the medical creditor at SOR debt 1.k, but he stated that he would pay the medical creditors at SOR debt 1.l and 1.m the day of the hearing (Tr. 61-63). He gave the creditor for the parking tickets at SOR 1.p-1.s a post-dated check for late September 2016. (Tr. 68).

Applicant traces his financial problems to not making enough money in his job and falling behind on his bills. He acknowledged that he did not have the money to pay his large bills, so he was focusing on paying the small ones (Tr. 28). His wife makes \$50,000 annually, and he takes home \$1,700 bi-weekly (Tr. 35).

Applicant has not had any credit or financial counseling. He stated that he had a written budget and \$200 positive monthly cash flow (Tr 38-39), but he provided no current budget. He signed up for a debt management program on 2 September 2016 (AE A). He provided no work or character references, and provided no evidence of community involvement.

### **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) 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, 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 \$78,000 in delinquent

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

debt, the resolution of which is barely started.<sup>4</sup> He has requested a hardship deferment of some education loans. He has been paying his delinquent child support by garnishment. He post-dated a \$500 check for five parking tickets. He failed to document payment on one debt. Otherwise, he has taken little action to address his debts.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, and the stated cause cannot be considered unlikely given Applicant's current income and the early stages of his debt management program.<sup>5</sup> Applicant's previous low income may be considered a circumstance beyond his control, but even if it could be so considered, Applicant has not been responsible in dealing with his debts. With the exception of the rent debt which was dismissed, and the garnishment, which began in December 2015, the little action Applicant has taken has occurred after he received the SOR.<sup>6</sup> These few efforts do not constitute a good-faith effort to resolve his debts.<sup>7</sup>

In addition, Applicant has received no credit or financial counseling. It remains to be seen what fruit his enrollment in a debt management program bears. He did not present a budget. Consequently, it is clear that his debts are not being resolved.<sup>8</sup> Further, Applicant provided no character or employment evidence to reasonably support a "whole person" analysis in favor of granting his clearance. I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E., and Applicant failed to mitigate the security concerns. Applicant knew that he had financial problems, yet failed to notify the Government, however generally. His conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.<sup>9</sup> This is particularly true where he took no action subsequent to his clearance application.<sup>10</sup> Accordingly, I resolve Guideline E for Applicant.

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<sup>4</sup>¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same

<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 . . . ;

<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;

<sup>9</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. . . ;

<sup>10</sup>¶ 17 (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a, c-s:	Against Applicant
Subparagraphs b:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph a:	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