



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 15-03919
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: Sean M. Bigley, Esquire

06/06/2017

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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 grant Applicant's clearance.

On 8 January 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 21 June 2016, when Department Counsel stated no objection to Applicant's response to the FORM. DOHA assigned the case to me 7 April 2017.

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<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-3 and 5-7, and Applicant's Response to the FORM (Response), containing Applicant exhibits (AE A-P). I granted Applicant's motion to exclude Item 4, his unauthenticated Report of Investigation, from consideration.

<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 financial allegations, except for SOR 1.c and 1.-g-1.h. He is a 42-year-old engineer continuously employed by U.S. defense contractors since February 2003. He served honorably, and with distinction, in the United States military from September 1992 to January 2000 (Item 3, AE C). He seeks to retain the industrial clearance he has held without incident since July 2003. He previously held a clearance without incident while in the military.

The SOR alleges, and Government exhibits (Items 5-7) substantiate, eight delinquent debts totaling over \$47,000. Applicant admits three debts totaling \$3,400. Applicant disputes all the remaining debts, claiming that they are the result of fraud and identity theft by an ex-girlfriend around 2012 (AE F). Applicant filed a formal criminal complaint in May 2013 (Answer, AE E). The prosecutor declined prosecution in July 2014 because the defendant pled guilty in another case (AE G).

Applicant disclosed SOR debt 1.c on his June 2013 clearance application (Item 3). He also reported that he had failed to timely file his 2012 Federal income tax return because of the fraud issues (SOR 1.i). He reported that he was delinquent on his mortgage, but was making catch-up payments.

Record evidence shows that Applicant disputed SOR debt 1.a in October 2013 (AE I) and again in May 2016 (AE H), but has not received a response yet to his latest request to remove the account from his credit report. Applicant has never had an account with that creditor. Applicant disputed SOR debt 1.b (which is a duplicate of SOR debt 1.f)<sup>3</sup> in October 2013 and again in June 2015, when the law firm representing the SOR 1.b creditor asserted its claim (AE I).

SOR debt 1.c is the delinquent credit card account Applicant listed on his June 2013 clearance Application (Item 3). The \$3,252 alleged is the past-due amount on the charged-off account in Applicant's November 2015 credit report (Item 5). However, the past-due amount in Applicant's April 2015 credit report (Item 6) was \$4,852, showing that Applicant had been making payments on the account. Moreover, Applicant's June 2013 credit report (Item 7) shows that the creditor charged off \$10,435 in May 2013, when the past-due balance was \$1,583. Further, AE J, a 1 June 2016 letter from the collection agent for the creditor that bought the charge-off balance, shows that Applicant

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<sup>3</sup>Department Counsel failed to establish SOR debt 1.f. None of the credit reports reflect the creditor alleged in the SOR. Applicant's June 2013 credit report (Item 7) shows a charged-off account, under the original creditor with a detailed account number, having been sold to another lender, presumably the creditor alleged at SOR 1.f. That account was reported by all three credit bureaus. However, the alleged creditor does not appear in either Applicant's April 2015 (Item 6) or November 2015 (Item 5) credit reports, and the original creditor does not appear on either report. Nevertheless, Applicant's October 2013 credit report (AE I) shows that the original creditor, with account number, sold the account to the alleged creditor, in approximately the alleged amount. Moreover, that creditor subsequently sold the account to the creditor alleged at SOR 1.b, and that creditor hired a law firm to collect the debt. The law firm references the original account and account number. Applicant disputed the account with the law firm (AE I).

began making regular payments on the account in June 2013, continued them through March 2016, and paid the final balance in May 2016.<sup>4</sup>

SOR debt 1.d is the same as SOR debt 1.e, alleged through two different successor creditors (the account numbers match in pertinent part).<sup>5</sup> A 13 May 2015 letter from the SOR 1.d creditor (AE K), correctly identifying the original creditor, original account number, and second successor creditor, shows that the creditor was closing the account based on Applicant's dispute, and notifying the three credit bureaus. This creditor has been removed from Applicant's November 2015 credit report. Applicant was unaware of SOR debts 1.g and 1.h, but paid debt 1.g in May 2016 (AE L) and paid 1.h in January 2016 (AE M), after he was able to locate the holders of the debts.

In his June 2013 clearance application, Applicant stated that he had not filed his 2012 Federal income tax returns because he was working with the Internal Revenue Service (IRS) and his financial firms to ensure that he did not have to pay tax on income that was attributed to him because of his girlfriend's fraudulent activity. He used a commercial tax preparation firm and filed his 2012 and 2013 Federal income tax returns in February 2014 (Answer, AE N). His 2012 return was processed as timely filed, and his 2013 return was timely filed. He received refunds for both years.<sup>6</sup> In September 2015, the IRS reviewed, verified, and accepted his identity theft documentation for tax year 2012 (Answer, AE O).

Applicant's May 2016 personal financial statement (PFS)(AE P) reflects \$1,600 positive monthly cash flow. He has an excellent work record (AE B), and his character references consider him honest and trustworthy (AE C).

### **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.

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<sup>4</sup>The June 2013 credit report listed the first 12 digits of the account number as listed by Applicant on his June 2013 clearance application. The account tracks through the April 2015 and November 2015 credit reports with only the first eight digits of the account number. The successor creditor refers only to the last four digits of the account number as listed in the clearance application. The collection agent's payment record reflects that Applicant undertook to pay the entire charged-off amount, and the stated account balances after each regular payment corresponds exactly to the amounts reflected on Applicant's April 2015 and November 2015 credit reports.

<sup>5</sup>SOR debt 1.e appears in Applicant's June 2013 credit report, held by the a first successor creditor. SOR 1.d appears twice in Applicant's April 2015 credit report, first under a second successor creditor, who reports the account sold, and then under the SOR creditor, a third successor creditor. SOR debt 1.d also appears in Applicant's November 2015 credit report, under the second successor creditor, showing the account sold with a zero balance.

<sup>6</sup>Indeed, his income tax refund for 2012 was about the amount he estimated it would be in his clearance application.

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>7</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced a period of financial difficulties around 2012, when an ex-girlfriend began to syphon money out of his financial accounts and opened fraudulent accounts in his name.<sup>8</sup> Her misconduct caused Applicant to fall behind on his mortgage and a credit card account, as well as the debts attributable to the fraudulent accounts, and to a delay in filing his 2012 Federal income tax return while he sought correction of income information. However, Applicant began to address this misconduct in May 2013, when he finally realized what was going on. He pursued criminal charges against the ex-girlfriend and disputed the fraud accounts. He brought his mortgage current before the SOR was issued, and the SOR debt 1.c balance alleged was the amount remaining on the account after Applicant made 29 regular monthly payments before the SOR was issued

Applicant meets most of the mitigating conditions for financial considerations. While his financial difficulties are both recent and multiple, the circumstances which led to his financial situation are unlikely to recur.<sup>9</sup> They were certainly due to circumstances

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<sup>7</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</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>9</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

beyond his control, and he dealt with them responsibly, having begun to address them as soon as he became aware of his ex-girlfriend's misconduct<sup>10</sup> Indeed, the only debts not resolved at the time of the SOR were medical bills for \$110 and \$74 that Applicant was unaware of, and promptly paid.

Although Applicant submitted no evidence to show that he received credit or financial counseling, his debts have clearly been resolved.<sup>11</sup> Applicant was in contact with his creditors well before the SOR was issued, and he made a good-faith effort to address these debts.<sup>12</sup> Moreover, I find that Applicant prudently delayed filing his 2012 Federal tax return until he could obtain correct IRS forms, and the IRS apparently agreed, having treated that return as timely filed and accepted his identity theft documentation. Accordingly, I conclude Guideline F for Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-b, d-f:	For Applicant (Fraud)
Subparagraphs c, g-h:	For Applicant (Paid)
Subparagraph i:	For Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>10</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>11</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>12</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.