



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



In the matter of: )  
XXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 15-04710  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

05/25/2017

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 February 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 20 June 2016, when Department Counsel stated no objection to Applicant's response to the FORM (Response). 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 1-5.

<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.m. He is a 36-year-old creative specialist employed by a U.S. defense contractor since February 2014, first as a temporary employee, then as a direct hire. He was employed by the same company as a designer from January 2012 to May 2013. From May 2013 to February 2014, he described himself as unemployed, self-employed (which I take to mean underemployed), and unemployed, never for more than three months at a time.

From February 2004 to June 2006, Applicant was a self-employed designer. From August 2006 to January 2014, Applicant attended college, without obtaining a degree. From July 2006 to January 2012, Applicant experienced periods of unemployment interspersed with periods of underemployment (college jobs) and self-employment (read underemployment), while he attended college. Applicant's periods of self-employment were as a contractor for the company that now sponsor's his clearance. Since entering college, Applicant has been financially supported by student loans, family, part-time employment, and unemployment compensation.

The SOR alleges, and Government exhibits (Items 2-6) substantiate, 12 delinquent debts totaling over \$96,000. Including the total balance of the accounts alleged, and not just the past-due amounts on three of the accounts, the total indebtedness on the delinquent accounts is over \$104,000. Applicant denies the SOR 1.a judgment, insisting that the judgment is not against him. He states that he has not been able to have the debt removed from his credit reports, but has not documented any efforts to accomplish that. He denies the delinquent loans on the grounds that the loans are no longer delinquent (Answer). However, he acknowledges in both his Answer and his Response, that the accounts will not be considered current until he has made successful payments through October 2016. He has established only that he has made payments from January to May 2016. Applicant admits that he failed to timely file his 2012 and 2013 Federal income tax returns. At the time of his Answer, the returns remained unfiled.

Applicant disclosed his failure to timely file his 2013 Federal income tax return on his October 2014 clearance application (Item 2). He stated that he was currently having the taxes prepared, and expected to have no tax liability from an early withdrawal from a retirement account, despite the fact that he anticipated that the Internal Revenue Service held a different view because he had not yet filed his tax returns.

Applicant also disclosed a \$44,723 Federal education loan account delinquency with an account number that matches the account number in the creditor communications contained in Applicant's Response. That account combined the seven specific loans that correspond roughly to the seven delinquent loans alleged at SOR 1.f-

1.l.<sup>3</sup> Finally, Applicant disclosed the delinquent education loan at SOR 1.b, with an account number that does not match any of the account numbers listed in the credit reports, and a stated balance slightly higher than that alleged in the SOR based on the November 2014 credit report. He stated that he was taking steps to consolidate his debt and make regular payments to pay off the loan.

Applicant discussed all the delinquent debts listed in Applicant's November 2014 credit report during his interview with a Government investigator in January 2015 (Item 3). Applicant acknowledged that all the loans were his, although he could not recall the particulars of any individual loan. He stated that he was willing and able to pay these debts, but did not discuss any particular steps he had undertaken to do so.

The SOR debts comprise a \$586 judgment obtained in February 2008 (SOR 1.a), and 11 delinquent education loans (SOR 1.b-1.l). The delinquent education loans are taken from the education loans in Applicant's November 2014 and January 2016 credit reports that reflect any delinquent collection or past-due balances. However, those credit reports also reflect numerous education loans which show original loan disbursements by different creditors with different account numbers, that may be reported as past-due or pays-as-agreed, with zero balances because they have been transferred or sold to another lender.<sup>4</sup>

Applicant's Response contains a 1 January 2016 letter from the new collection agent for the Federal student loan manager stating that the collection agent would deposit a post-dated transaction for an agreed amount within 10 days of the letter. The letter states that the total amount due is \$65,470.66, and specifically covers the loans at SOR 1.f-1.j. A 7 January 2016 bill from the Federal student loan manager confirms the 11 January 2016 receipt of a \$608 payment, reducing the total balance to \$65,111.36.

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<sup>3</sup>SOR debts 1.f-1.j first appear in Applicant's November 2014 credit report (Item 4) with complete account numbers that exactly match the account numbers in Applicant's Response. SOR debts 1.k-1.l first appear in Applicant's January 2015 credit report (Item 5), at which point the credit bureau is using only the first four digits of the loan account numbers to identify the accounts, which are essentially the same for all seven accounts. Only by extrapolating from the loan origination dates, original loan disbursement amount, and increase in account indebtedness between November 2014 and January 2016 was I able to track the individual accounts to the January 2016 credit report, which contains the balances alleged in the SOR. The \$44,723 balance Applicant listed exactly matches the combined principal amount contained in Applicant's Response.

<sup>4</sup>Briefly stated, the life of a Federally-guaranteed student loan is this: a borrower gets approved for an annual loan amount based on a detailed financial application. Loans are usually disbursed by a commercial lender (through its education loan division, with an account number and a high credit amount that reflects the original disbursement amount). Borrowers usually get a deferment on their loans when they leave school, graduated or not, and may be eligible for various forbearances. If a borrower begins repayment when expected, the initial loans will show a current balance, or a past-due balance if the borrower has fallen behind. However, if the account remains delinquent, the originator transfers the account back to the Federal student loan manager, who may begin collection action itself, or transfer the account to any of the various collection agents it uses to pursue delinquent loans. So, for example, in this case, the SOR 1.b creditor is a known collection agent for the Federal student loan manager, as is the SOR 1.c-1.d creditor. The SOR 1.f-1.l creditor is the Federal student loan manager. Applicant's Response shows that those loans have been transferred to a different collection agent as of January 2016.

The entire payment was applied to interest, costs, and fees. The principal balance remains as reported by Applicant on his October 2014 clearance application. A 25 May 2017 bill from the Federal student loan manager confirms the 11 May 2016 receipt of a \$608 payment, reducing the total balance to \$63,891.58. Again, the principal balance remains unchanged. A 1 June 2016 letter from the collection agent setting up the June 2016 payment, states that the balance is \$63,887.03. Applicant's 12 January 2016 credit report (Item 5) has not been updated with the 11 January 2016 payment. Applicant's 12 May 2016 credit report (Item 5) reflects receipt of the May 2016 \$608 payment, noted on each of the seven accounts.

Applicant's Answer asserts that his payments to the new collection agent cover all 11 education loans, when his Response makes it clear that it does not. Applicant documented no action taken to resolve SOR debts 1.b-1.e. Applicant's January 2016 and May 2016 credit reports (Item 5) show that the past-due balances for SOR debts 1.c-1.e continue to grow, as well as showing a new past-due account for that creditor. Those accounts show no payments since 2012.

On balance, Applicant's credit reports show numerous current accounts, including a significant mortgage, despite his intermittent income. Only his education loans are delinquent. Applicant provided no budget or financial statement. He has not received any credit or financial counseling. He provided no work or character references, or any evidence of community involvement.

### **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. Applicant has a history of financial difficulties, which are ongoing.<sup>6</sup> His efforts to address his debts are both late and incomplete.

Applicant has nearly \$115,000 delinquent educational debt, incurred during the over-eight years he was in school from August 2006 to January 2014, spread out over 11 education accounts alleged in the SOR. He recently began payments on the over \$65,000 held by the SOR 1.f-1.j creditor, and made five monthly payments before the record closed. He has taken no action to address the \$51,000 delinquent education accounts at SOR 1.b-1.e. He has not documented any efforts to dispute the SOR 1.a judgment. He has still provided no documentation that he filed his 2012 and 2013 Federal income tax returns.

The Appeal Board has long held that failure to timely file required tax returns may demonstrate a lack of judgment inconsistent with access to classified information.<sup>7</sup> This is true whether the failure to file is willful<sup>8</sup> or attributed to the press of other circumstances.<sup>9</sup> In December 2015, the Appeal Board upheld a denial of clearance, in a case notably similar to this, of an applicant who had failed to file Federal or state income tax returns for 10 years. Applicant’s case was not so extreme, but more than 20 months elapsed since Applicant disclosed his failure to file his 2013 tax return and represented that he expected to file them soon. Security concerns under Guideline F are not limited to cases in which an Applicant is financially insolvent or is experiencing difficulty in paying debts. Delinquent debts are not required to hold Applicant accountable for his failures to timely file his tax returns. Here, the failure to file was deliberate, and in additions, Applicant has significant delinquent.

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; although the circumstance which

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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>ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014), reversing Administrative Judge’s favorable decision. See, e.g., ISCR Case No. 98-0608 at 2 (App. Bd. Jun. 27, 2000)(failure to file for five years).

<sup>8</sup>See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

<sup>9</sup>See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

led to his financial situation may be unlikely to recur.<sup>10</sup> Applicant's financial problems are due to his decision to attend college for more than eight years, without apparent thought to how he would deal with his loans when they became due. This is not a circumstance beyond his control, and he cannot be considered to have dealt with them responsibly, having taken no action to address the judgment, file his delinquent taxes, address nearly half his delinquent education loans, and only belatedly entered into a repayment plan on the other half.<sup>11</sup>

Applicant submitted no evidence to show that he received credit or financial counseling, and these debts are clearly not being resolved.<sup>12</sup> There are no signs that Applicant has been in contact with any of these creditors, except for the Federal student loan manager, and thus he cannot establish that he has made a good-faith effort to address those debts.<sup>13</sup> His recently begun repayment plan might have constituted such an effort, had it been undertaken sooner and provided Applicant more than a five-month track record. Accordingly, I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-m:	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>10</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>11</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>12</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>13</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.