



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



In the matter of: )  
XXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 15-05441  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel  
For Applicant: Gregory F. Greiner, Esquire

03/31/2017

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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 30 July 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline G, Alcohol Consumption.<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 11 April 2016, and I convened a hearing 12 May 2016. DOHA received the transcript (Tr.) 1 June 2016.

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<sup>1</sup>The record consists of the transcript (Tr.), Government exhibits (GE) 1-12, hearing exhibit (HE) I-II, and Applicant exhibit (AE) A-I. AE E-I were timely received post-hearing. The record closed 13 June 2016, when Department Counsel stated no objection to AE E-I.

<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.b, which he claimed was paid, and 1.f, which he claimed was no longer on his credit report (AE A). He is a 44-year-old independent Government contractor since 2004. This means that he is a contract employee, not a direct employee of the five Government contractors listed as his employers on his March 2014 clearance application (GE 1). He seeks to retain the clearance first issued in December 1995, and renewed as necessary since.

The SOR alleges, and GE 1-5 and 11-12 establish, five delinquent debts totaling nearly \$115,000, as well as Applicant's October 2000 Chapter 7 bankruptcy discharge. Applicant admits three debts totaling over \$114,000 (SOR 1.c-1.e). He also admits to having filed for Chapter 7 bankruptcy protection in June 2000, and having been discharged of \$160,000 in October 2000 (SOR 1.a)(GE 11; Tr. 26, 47). The bankruptcy was caused by financial issues related to his April 2001 divorce from his first wife. Applicant also admits to being convicted of driving under the influence of alcohol (DUI), related to arrests in September 1990, September 1991, June 1997, November 1997, May 2000, and July 2011 (SOR 2.a-2.f)(GE 6-10).

On his March 2014 clearance application, Applicant reported his failure to pay his 2006, 2007, and 2009-2011 Federal taxes, an August 2004 tax lien resolved in December 2005, two June 2007 tax liens resolved in June 2010, the July 2012 tax lien alleged at SOR 1.c, and the judgment alleged at SOR 1.e. He also reported his history of alcohol-related convictions and alcohol abuse treatment.

SOR debt 1.b is a medical debt that Applicant paid (AE E) after the SOR was issued.<sup>3</sup> SOR debt 1.e is also a medical bill taken to judgment in September 2012 (GE 1, 3). The judgment was satisfied on 1 June 2016.(AE E) Finally, SOR debt 1.f is also a medical debt that Applicant claims is no longer on his undated credit report (AE A) obtained at the time of the hearing. Applicant presented no documentary evidence of payment. As the date of last activity on the account is July 2008 (GE 3), and the account does not appear on his June 2015 credit report either (GE 4), it is likely the account aged off Applicant's credit reports.

Applicant has an extensive history of being unable to pay his Federal income taxes when due. During a July 2002 interview with a Government investigator (GE 12), he discussed past-due taxes for 1994 and 1996, which were originally being garnished, but for which he had entered into a repayment plan. He estimated that he owed about \$20,000 to the Internal Revenue Service (IRS) for tax years 1994-2001. He had not filed his 2001 taxes yet, but expected to owe another \$2,000 for his state taxes.

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<sup>3</sup>Setting aside the fact that the amount of the debt reflected in AE E does not match the amount of the debt in GE 3, which is what the SOR is based on. Nor is there any account number in AE E to match the account number in GE 3.

Applicant reported an August 2004 tax lien resolved in December 2005 on his most recent clearance application (GE 1). The IRS entered two tax liens against Applicant in June 2007, for \$12,350 and \$8,597. Both liens were satisfied in June 2010 (GE 1, 3). However, the IRS also entered a \$94,758 tax lien against Applicant in July 2012 (SOR 1.c)(GE 1, 3). The credit report does not indicate what years the lien was for, but Applicant's March 2014 clearance application (GE 1) identified the tax years as 2006, 2007, and 2009-2011. AE B and F show that Applicant has been making regular \$2,070 monthly payments from at least March 2014 to January 2016 on tax years 2006-2009. Applicant's IRS account transcripts for 2006, 2007, 2008, and 2009 confirm the payments, but also reflect that while the returns were timely filed, Applicant incurred additional tax, miscellaneous penalties, and interest charges for 2006, 2007, and 2009, resulting in the June 2012 tax lien (AE G). In addition, Applicant owes the IRS another \$17,442 for tax year 2011 (SOR 1.d), for which he has not provided an account transcript.

Applicant traces his ongoing tax problems (as reflected in his 2012 tax lien, as well as the earlier tax liens that have been satisfied back to 1994), to his failing to have enough taxes withheld from his salary, or to make necessary periodic payments on his tax liability through the tax year. He also had an early retirement plan withdrawal (Tr. 85) for which he incurred penalties. Applicant describes the 2011 IRS debt as a tax lien caused by the same underpayment of taxes (Tr. 33), although there is no record evidence so show that a lien has been taken out for this tax year. Applicant eventually hired a tax professional to deal with his taxes (Tr. 80). He testified that he did not owe any additional taxes for 2012 or 2013, but did have additional taxes for 2014, after which he adjusted his withholding again (Tr. 64, 81). However, he provided no tax account transcripts for these years. He acknowledged that his taxes have been messed up for most of the last 22 years, without much change in his situation (Tr. 86). The IRS periodically reviews Applicant's tax accounts, which it is currently doing, and may want Applicant to increase his monthly payment (Tr 54-55). Applicant has considered getting a private loan to pay his Federal taxes off completely, but is unable to get a loan (Tr. 44).

Applicant's September 1990, September 1991, June 1997, November 1997, and May 2000 alcohol-related incidents all resulted in some combination of counseling, alcohol safety programs, and Alcoholics Anonymous (AA) meetings. During his July 2002 subject interview (GE 12), Applicant told the investigator that he last drank on his April 2001 wedding day. He stopped drinking because he experienced a spiritual transformation, and had no future intentions of drinking alcohol.

Applicant abstained from alcohol until 2010, when he began drinking again during a time when he and his wife were having marital problems (Tr. 74). They were able to solve their problems through counseling, but he continued to drink occasionally, always at home. In July 2011, Applicant was on some new medication for a medical condition he has. He had a few drinks at home when his blood sugar level dropped precipitously. He did not have the right food at home, so he drove to a nearby convenience store to get some candy to restore his blood sugar level. Coming out of the store, he stumbled

stepping off the curb and was noticed by the police. He was given a blood alcohol test and field sobriety test and was eventually charged. He later pled guilty to DUI (Tr. 39-42). Applicant was sentenced to DUI court, another alcohol safety program, AA meetings, and a 16-week outpatient treatment program.

Applicant completed the outpatient treatment program on 1 September 2012 (AE I). He says he was diagnosed as a moderate alcoholic,<sup>4</sup> although no such diagnosis appears in the treatment records. Applicant says the program told him to be very careful with his drinking, but did not say outright that he should abstain from alcohol. Nevertheless, while Applicant thought he should not drink, he had no ongoing aftercare program or AA attendance, and still drinks on vacations and special occasions, most recently in April 2016 (Tr. 77-79) .

Applicant earns \$180,000 annually; his wife earns another \$100,000 annually (Tr. 82). Applicant drives a \$95,000 automobile; his wife drives a \$45,000 automobile (Tr. 70-71). Applicant and his wife have had short foreign vacations in April 2006, July 2006 (his mom paid), August 2010, April 2011, October 2012, 2013, 2014, and April 2016 (Tr. 58-63). Applicant has not had any credit or financial counseling. He provided no current budget. His current supervisor (AE C) and a coworker (AE D), consider him honest and trustworthy, and recommend him for his clearance. However, neither is aware of the issues raised in the SOR.

## **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 G (Alcohol Consumption).

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.

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<sup>4</sup>However, according to the DSM 5, the new language is "alcohol use disorder," in which the severity levels are mild, moderate, and severe (HE II).

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. In October 2000, Applicant got a new financial start in his Chapter 7 bankruptcy discharge of debts from his divorce. Yet, he continued to experience financial problems. Three small debts alleged in the SOR were either paid after he received the SOR, or not clearly addressed at all. He continues to accrue Federal tax debt due to under-withholding of his taxes.<sup>6</sup> Moreover, despite abundant income, Applicant and his wife appear to live a lifestyle bordering on extravagant, while not being more proactive on their taxes.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, although the stated cause may be considered unlikely to recur now that Applicant is finally getting professional help with his taxes.<sup>7</sup> Applicant never really stated a reason for the three small debts to have become delinquent, and his ongoing tax issues were certainly within his control to resolve. Moreover, Applicant has not been responsible in dealing with his debts. His small debts were only addressed after he received the SOR. He had 22 years of problems paying his taxes, yet took very little action to address his tax shortfall until recently.<sup>8</sup> His regular efforts to establish and pay installment plans with the IRS evidence some good faith on his part, yet failure to address the underlying cause means that Applicant has just been rolling installment plans over from year to year.<sup>9</sup>

In addition, Applicant has received no credit or financial counseling. He has no budget. He has been making installment payments to the IRS for years, but only recently has taken steps to address the underlying withholding shortfalls.<sup>10</sup> Further,

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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;

<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;

Applicant's character references, neither of whom are aware of his SOR issues, are insufficient to 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 G, by demonstrating Applicant's six alcohol related convictions between September 1990 and July 2011, plus his continued drinking after receiving a diagnosis of moderate alcohol abuse disorder.<sup>11</sup> Applicant committed to abstinence after his fifth alcohol-related conviction in 2000, and discussed that decision during his background investigation in July 2002. Yet, Applicant resumed drinking, and while apparently not drinking heavily, had a medical misadventure in July 2011 that resulted in his most recent conviction. He seems to adhere strictly to the treatment recommendations from September 2012 to be careful about his drinking, while ignoring his own conclusion that he ought not to drink.

Applicant does not fully meet any of the mitigating conditions for alcohol consumption. Applicant does not meet MC 23(a) because while he has had no more convictions since July 2011, he has not been abstinent as was suggested by his treatment program and assumed by Applicant to be a good idea. Moreover, he fails to meet MC 23(a) because his alcohol abuse was recent, frequent, and not particularly unusual in its circumstances. In addition, Applicant does not meet requirements for MC 23(b) because while he acknowledged his past problems with alcohol, and achieved abstinence for several years, he has returned to the drinking pattern that most recently caused his last conviction.<sup>12</sup> He participates in no aftercare or AA meetings, or employs no other tools (utilizing no-alcohol social activities; removing alcohol from the home).

Applicant does not meet the requirements of MC 23(c) because, while he is not a current employee participating in a counseling or treatment program; and the counseling, alcohol safety programs, and AA meetings assigned after his first five convictions arguably do not constitute a treatment program; and Applicant adopted abstinence after his May 2000 conviction but had a significant relapse in July 2011. Finally, Applicant does not meet the requirements of MC 23(d) because while he successfully completed outpatient treatment, he did not document a favorable prognosis from the program, or any later program, and continues to drink.

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<sup>11</sup>¶ 22(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition . . . regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (d) diagnosis by a duly qualified medical professional . . . of alcohol abuse or alcohol dependence; . . . (f) relapse after diagnosis of alcohol abuse or alcohol dependence and completion of an alcohol rehabilitation program;

<sup>12</sup>¶ 23(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

Applicant has not abused alcohol since his July 2011 incident. However, that does not appear to be attributable to any adherence to his treatment program recommendations. Given those recommendations, which he understood to favor abstinence, the absence of any aftercare programs or support systems, and his continued alcohol consumption, I cannot conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
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Subparagraph a:	For Applicant
Subparagraphs b-f:	Against Applicant

Paragraph 2. Guideline G:	AGAINST APPLICANT
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Subparagraphs a-f:	Against Applicant
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### **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