



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



In the matter of: )  
)  
) ISCR Case No. 15-05956  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel  
For Applicant: Christopher Shepard, Personal Representative

03/07/2017  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

METZ, John Grattan, Jr., Administrative Judge:

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

On 28 February 2016, 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 7 June 2016, and I convened a hearing 29 August 2016. DOHA received the transcript (Tr.) 7 September 2016.

---

<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibits (AE) A-G. AE G was timely received post hearing. The record closed 14 September 2016, when Department Counsel stated no objection to AE G.

<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 financial allegations 1.a, 1.b, and 1.d, and denied the remainder. He is a 48-year-old cyber security analyst employed by a defense contractor since August 2016.<sup>3</sup> He was previously employed on the same contract as a systems administrator from May 2012 to August 2016. His current salary is \$98,000 annually (Tr. 48). He was unemployed/underemployed from October 2010 to May 2012. While he was unemployed, he received state-sponsored training (Tr. 58-59). He also ran an ultimately unsuccessful karate school. Applicant was employed in a related field from May 2008 to October 2010, when he was laid off because the company moved to another location (Tr. 55-57).<sup>4</sup> He has not previously held a security clearance (GE 1).

The SOR alleges, and Government exhibits (GE 1-6) establish, seven delinquent debts totaling over \$39,000. Applicant admits three debts totaling \$1,600. Applicant paid SOR debt 1.a in March 2016 (AE A), and SOR debt 1.b in March 2016 (AE A, B). He resolved SOR debt 1.c in September 2015 (AE A, C),<sup>5</sup> and SOR 1.d in March 2016 (AE A, D). Applicant's 6 October 2014 clearance application (GE 1) disclosed the \$22,000 delinquent first mortgage (SOR 1.e), for which Applicant was exploring solutions, including a short sale, with the mortgage holder, and a \$17,000 delinquent second mortgage not alleged in the SOR.<sup>6</sup> He discussed SOR debts 1.a, 1.c, 1.e, and 1.f during his 17 November 2014 interview with a Government investigator (GE 2). The debts discussed correspond to the delinquent accounts contained in GE 3. Applicant believes he saw this credit report in 2014 (Tr. 62). He also discussed his delinquent second mortgage.<sup>7</sup> He stated that he would investigate the medical bills at SOR 1.a and 1.f if he was able to confirm that these small bills were his. He apparently took no action to locate these creditors until after he received the SOR.

---

<sup>3</sup>Applicant changed employers to continue to work on the same contract (Tr. 60).

<sup>4</sup>Applicant was unclear whether he ever had the option of moving to the new location, but the move would have added appreciably to his daily commute.

<sup>5</sup>SOR debt 1.c was for an automobile loan Applicant co-signed for a friend who was living with him at the time. According to Applicant, the \$4,700 she paid in September 2015 (AE C) was supposed to be settlement in full; the \$950 in the SOR was to have been written off (Tr.27-28). However, the 29 June 2016 confirmation from the creditor states only that the account was settled in full on 16 June 2016. Moreover, the letter does not state whether the creditor is confirming on that date that it had previously written off the \$950, or that Applicant paid the remaining balance on that date. AE A does not contain bank statements covering that time in June which might have clarified the matter.

<sup>6</sup>Applicant stated that he had been paying \$630 monthly (on a \$592 monthly mortgage) and was proposing to the lender to continue those payments until December. AE G shows that between the period ending 1 July 2014 and the period ending 1 January 2015 (seven months) Applicant made four \$630 payments, two \$315, payments, and one \$188 payment.

<sup>7</sup>Applicant stated that he obtained a \$25,000 loan directly from the lender (identified by account number) in 2004, with a current balance of about \$17,000. None of Applicant's credit reports report this loan, by name, account number, or original amount.

The home secured by the mortgage at SOR 1.e was sold in April 2015 (AE E). Applicant stated this was a short sale, but the credit reports do not corroborate that claim.<sup>8</sup> The April 2015 settlement statement in AE E shows only that the home was sold for \$75,000, a first mortgage of \$68,000 was paid, and Applicant received no money out from the sale. There is no indication of who the first mortgage holder is, and no mention of a second mortgage. The two 2014 credit reports (GE 3, 6), show the account 120 days past due, with a balance of nearly \$87,000. However, in October 2014, the loan servicing contract was sold to another mortgage company, who directed Applicant to make payments to a third collection agent (AE E). The transfer date was after the date of GE 3. Neither the new mortgage company nor its designated collection agent appear to have reported its account to the credit bureau for Applicant's July 2015 (GE 4) or January 2016 (GE 5) credit reports.<sup>9</sup> If the sale was indeed a short sale, Applicant has at least a \$19,000 deficiency, the resolution of which is unexplained. If the deficiency was forgiven, Applicant has additional income to account for on his taxes.

Applicant testified (Tr. 29-32) that the designated collection agent for the new mortgage company was also servicing a second mortgage for Applicant. No second mortgage appears as such in any of Applicant's credit reports. In addition, the account number Applicant listed for this creditor on his clearance application does not match the account number on the 21 April 2015 reduced payment statement reporting the designated collection agent's adjustment to this account. The reduced payoff statement reflected that his \$191,889.58 total payoff amount—consisting of \$93,484.77 principal balance and \$98,404.81 interest balance—was being reduced by \$123,408.38, to \$68,481.20, payable by 1 May 2015. The letter does not indicate how the principal balance became over \$93,000, when the original loan was for \$25,000 (AE G). The letter also does not state how the debt reduction was accomplished, or whether the reduction constitutes a debt forgiveness providing income to Applicant. If this was another forgiveness, Applicant has another \$123,000 in income that has to be accounted for. However, the designated servicing agent also provided a loan modification agreement<sup>10</sup>

---

<sup>8</sup>Applicant's June 2014 credit report (GE 6) reports two mortgage accounts with the same original creditor opened in May 1997, both essentially for the same amount, each with a different account number. The high credit for each is over \$98,000. Both accounts were reported as transferred with zero balances. However, one account was transferred in June 2008; the other in August 2013. GE 6 shows the SOR 1.e creditor with a mortgage account with an entirely different number, and no indications it is related to either of the original mortgages. The mortgage was also 120 days past due in May 2014. However, the high credit amount was \$93,484. Applicant's October 2014 credit report (GE 3) shows both original creditors that were transferred in June 2008 and August 2013, with the correct high credit figures. GE 3 also reports the SOR 1.e creditor with identical high credit and balance amounts, but with the past due amount alleged in the SOR.

<sup>9</sup>GE 4 lists the original creditor for the account that was transferred in August 2013, and the SOR 1.e creditor, with both accounts listed as transferred or sold. GE 5 lists the original creditor with enough of an account number and other indicators to trace it back through GE 3 and GE 6. It also states the account was transferred or sold. It mentions the SOR 1.e creditor, but as the seller of the account. GE 5 also lists the SOR 1.e creditor, noting the account was transferred or sold.

<sup>10</sup>The loan modification agreement recites a promissory note and mortgage dated October 1997, for \$25,000. The modification does not recite whether this is a first or second mortgage. None of the credit reports list a mortgage taken out in October 1997.

(ostensibly to be executed in August 2016), further reducing Applicant's exposure to the "Interest Bearing Principal Balance" of \$12,000 (at zero percent interest) provided that Applicant make \$200 monthly payments for sixty months, beginning 15 May 2015 and continuing until 15 April 2020 (AE E). If successful, this constitutes a potential additional \$57,000 in income to be accounted for. If he defaults, the entire amount will be due.

In August 2016 Applicant executed a payment authorization dated 7 July 2016 to the designated servicing agent. The authorization letter cites the same account number listed in Applicant's clearance application. But, the payments are not made automatically, only when Applicant communicates the amount and date the payment is to be drafted. According to Applicant, the new agreement was required because the designated servicing agent switched banks in June 2016, requiring a double payment in August and the first Friday in September 2016 (Tr. 31). The September 2016 pay details from the designated servicing agent (AE G) shows a quadruple payment on 1 September 2016. Further confusion is raised because the listed principal balance on the reduced payment statement is almost exactly the high credit balance reported by the SOR 1.e creditor on the 2014 credit reports.<sup>11</sup> Moreover, the designated collection agent appears nowhere in Applicant's credit reports, as either a first or second mortgage holder. Further, the account numbers used by the designated collection agent on different forms bear no relation to the account numbers used by the original mortgage lenders or the SOR 1.e creditor.

Applicant has not been able to locate the SOR 1.f creditor. He promised to pay the creditor by the end of the week if he could locate the creditor (Tr. 34). However, this account has been in collection since November 2013 (GE 3, 6).

SOR debt 1.g is for a judgment filed against Applicant and his wife in October 2007 (GE 6). Applicant states that his wife was to pay the judgment while they were still married, but she did not (Tr. 35). Applicant apparently made a \$2,000 payment on the judgment in April 2015, to get the creditor to release the lien so Applicant's house could be sold. On 13 November 2015, Applicant entered into a repayment agreement with the creditor (AE F) which obligated Applicant to pay \$180 on or before 30 November 2015, continuing on the 30<sup>th</sup> of each month until the outstanding balance of \$10,183.71, plus interest and collection costs was paid.<sup>12</sup> On 8 September 2016, the creditor reported that the account was considered current, although by my calculations, he should have

---

<sup>11</sup>In addition, the new balance after reduction listed by the designated servicing agent almost exactly matches the first mortgage payoff in the real estate settlement form (AE G).

<sup>12</sup>AE G documents that Applicant made payments on 30 December 2015 (cleared 12 January 2016, 30 January 2016 (cleared 22 February 2016), 4 April 2016 (double payment, cleared 11 April 2016), 14 July 2014 (cleared 25 July 2016), and 3 August 2016 (cleared 15 August 2016). The creditor's 7 September 2016 account statement (AE G) also shows a regular payment posted on 2 December 2015 (November payment?) and a double payment posted on 24 August 2016. Applicant testified (Tr. 38-40) that catch-up payments were necessary because he would forget to make the payments. He said he is setting up automatic payments this month (Tr. 35, 40).

paid \$1,800 through the end of August 2016, and he has only paid \$1,620, one payment short.

Applicant attributed his financial problems to his unemployment and underemployment, to his wife's providing financial support to their adult children without his knowledge (GE 2; Tr. 32), and his May 2014 separation from his wife, due in part to her providing that support. They did not have a formal separation agreement, but Applicant expected to file the divorce papers after the hearing (Tr. 40). Applicant wanted to split the marital debts, but Applicant took them completely because his wife stated that she would just file bankruptcy on her share of the debt (Tr. 36).

Applicant has documented no credit or financial counseling, and has not presented a budget. He provided no work or character references, or any 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).

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>13</sup>

---

<sup>13</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

## Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. The Government established over \$39,000 in delinquent debt since at least November 2015.<sup>14</sup> Applicant established that he resolved SOR debt 1.c before the SOR was issued, but only paid SOR debts 1.a, 1.b, and 1.d after the SOR was issued. SOR debt 1.f remains unresolved and unlocated. Applicant's records document that the home secured by the mortgage at SOR 1.e was sold in April 2015, but do not establish that he has no deficiency balance to address or that he has accounted for any income attributable to any debt forgiveness he may have received.<sup>15</sup> Similarly, his documents establish that he entered a repayment plan on SOR debt 1.g in November 2015, but has a spotty payment record to date.

In addition, Applicant does not fully meet any of the mitigating conditions for financial considerations. His financial difficulties are recent, and not infrequent. To the extent they are due to his unemployment/underemployment, his wife's irresponsible dealing with their adult children, and his separation and pending divorce, they may be unlikely to recur.<sup>16</sup> These factors were certainly beyond his control, but his handling of his financial problems was not fully responsible. He knew of SOR debts 1.a and 1.f in November 2014, yet did not followup on his promise to explore those debts until after he received the SOR. His incomplete records keep him from clearly establishing the status of his SOR 1.e mortgage debt after the April 2015 sale. Similarly, his irregular payments on his agreement to resolve his 2007 judgment prevent him from demonstrating that he was responsible addressing this debt.<sup>17</sup> Payment of some debts after he received the SOR does not constitute a good-faith effort to pay his debts, although a better showing of the status of SOR debt 1.e and regular payments on SOR debt 1.g could constitute a good-faith effort to resolve those debts.<sup>18</sup>

Applicant's efforts to resolve SOR debts 1.a, 1.b, and 1.d were undertaken only after he received the SOR. The Government is not the collection agent of last resort. The Government expects applicants to deal with their delinquent debts because of their

---

<sup>14</sup>¶19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

<sup>15</sup>Applicant also has what he claims is a delinquent second mortgage that he has received significant debt reduction, with the prospect of further debt reduction. If he can complete what has also been a somewhat spotty payment record. This debt was not alleged in the SOR, and I have not considered it on the merits of the case. However, the shadow of a potential \$180,000 reportable income if the debt reductions constitute debt forgiveness, plus the \$19,000 deficiency he may have from his home sale does not bode well for his ability to stay on the payment plans he has established for the debts that are in the SOR.

<sup>16</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . . ;

<sup>17</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>18</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

legal and moral obligation to do so, not because they face the risk of adverse administrative action. While his efforts to address his delinquent mortgage and judgment were undertaken before he received the SOR, his incomplete records and irregular payment record mean that it is too soon to conclude that he has his financial problems under control, particularly where he has not received credit or financial counseling.<sup>19</sup> Further, he provided no favorable character and work references to establish a “whole-person” analysis supporting a favorable clearance action. Accordingly, I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b, e-g:	Against Applicant
Subparagraph c:	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.

---

JOHN GRATTAN METZ, JR  
Administrative Judge

---

<sup>19</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;