



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXX	)	ISCR Case No. 16-01433
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esquire, Department Counsel  
For Applicant: *Pro se*

03/29/2018

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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 16 September 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) 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

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibit (AE) A. AE A was timely received post-hearing. The record closed 26 June 2017, when Department Counsel indicated no objection to AE A.

<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. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

April 2017, and I convened a hearing 24 May 2017. DOHA received the transcript 2 June 2017.

### **Findings of Fact**

Applicant admitted the SOR financial allegations, except for SOR 1.c, 1.g, 1.i-1.k, 1.n, and 1.u-1.v. He is a 45-year-old network support technician employed by a U.S. defense contractor since March 2017. He seeks reinstatement of the security clearance he held between 1991 and May-June 2016, when he was fired from another contractor job.<sup>3</sup> He served honorably in the U.S. military from October 1990 to October 1995 (GE 1).

Applicant has twin teenage girls from an earlier relationship, born in January 1998. He never married the girls' mother who has since passed away. He also has a son, born September 2011, and twins (boy and girl), born in July 2012, with a woman he married in October 2012, separated from in April 2013, and divorced in February 2014.

The SOR alleges, and Government exhibits (Items 2-3) substantiate, 25 delinquent debts totaling nearly \$41,000. Applicant admits 15 delinquent debts totaling nearly \$37,000. He also admits filing for Chapter 7 bankruptcy protection in August 2005, and receiving a discharge of his dischargeable debts in 2006. He claims, without corroboration, to have paid most of the ten debts, totaling \$4,000, that he denies.

The largest debt is nearly \$17,000 delinquent child support (SOR 1.c). He has ten delinquent medical debts totaling \$4,400 which he claims, without corroboration, to have had medical insurance for.<sup>4</sup> He has two state tax liens totaling nearly \$13,000, filed in 2013 and 2015 (SOR 1.o.-1.p).<sup>5</sup> He has four delinquent parking tickets that he claims, again without corroboration, to have paid (SOR 1.w-1.z). The eight remaining debts are routine credit accounts. All of the debts alleged in the SOR pre-date his May-June 2016 job loss. Most of the SOR debts pre-date his April 2013 separation and February 2014 divorce. Applicant also claimed, but did not document, retaining the services of a credit-repair law firm, for which information was still being gathered (Tr. 26; 39-40). However, he acknowledged that no repayment plans were in place (Tr. 40).

Applicant reported no financial problems on his January 2014 clearance application (GE 1). There is no evidence he was interviewed about his finances during

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<sup>3</sup>Although Applicant stated that no reason for his firing was given, he was aware of a February 2016 security incident by his employer related to his finances (Tr. 29-30).

<sup>4</sup>Applicant's 7 June 2017 letter from his personal injury lawyer [AE A.1(a)] states that Applicant had an automobile accident in June 2016, for which he incurred medical bills with seven named medical providers. These debts do not correspond to any of the SOR medical debts, as the most recent debts alleged are found in Applicant's March 2016 credit report (GE 3), compiled some months before his accident.

<sup>5</sup>He submitted copies of his 2016 state and Federal income tax returns [AE A.2(a)] purportedly to go toward arrears and payments to the Internal Revenue Service (IRS). However, both tax returns show taxes owed.

his background investigation. Applicant has not explained why his finances deteriorated before his separation and divorce, although his finances may have deteriorated after his separation, and would certainly have deteriorated further after being fired in May-June 2016 and being injured in a June 2016 accident.

Applicant currently earns \$55,000 annually. He receives another \$15,600 annual disability pay for his military service. He claimed to have positive monthly cash flow—hence the credit repair law firm—but provided no current budget or financial statement. He received credit counseling as part of his 2005 bankruptcy (Tr. 41). 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(d). 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>6</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant has a history of financial difficulties which date back to his 2006 Chapter 7 bankruptcy discharge. He was fired from his job during the pendency of his current background investigation, a termination

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<sup>6</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

he believes may have been related to his financial problems.<sup>7</sup> His finances further deteriorated after his separation and divorce, and his period of unemployment prevented him from taking meaningful action on his debts until he was re-employed in March 2017.<sup>8</sup>

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple, and his financial situation cannot be considered unlikely to recur.<sup>9</sup> Applicant's financial problems do not appear to have been largely due to circumstances beyond his control; although his separation and divorce, his firing, and his automobile may be considered largely due to circumstances beyond his control and preventing him from taking meaningful action on his debts. However, he failed to document his claimed payments, or a current progress report from his claimed debt repair law firm. Consequently, he has not demonstrated that he has taken responsible measures to deal with his delinquent debts.<sup>10</sup>

Applicant received credit counseling as part of his 2006 bankruptcy discharge, yet he was unable to take advantage of the fresh start afforded from that discharge. He acquired new debt, and even if he had documented his progress with the credit repair law firm, it would be too soon to conclude that his debts were being resolved or under control.<sup>11</sup> Similarly, even with the proof he failed to provide, it would be too soon to establish that he has made a good-faith effort to address his debts.<sup>12</sup> Moreover, he provided no "whole person" evidence upon which I might base a favorable result. Accordingly, I resolve Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraphs a-z:

Against Applicant

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<sup>7</sup>Indeed, DOHA appears to have been unaware of his job termination until the issue arose at this hearing.

<sup>8</sup>¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; (g) . . . or failure to pay annual Federal, state, or local income tax as required:

<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 . . .

<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 individual 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **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