



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-02523  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Michelle Tilford, Esquire, Department Counsel  
John Bayard Glendon, Deputy Chief Department Counsel  
For Applicant: Pro Se

07/31/2018

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

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

On 19 September 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct.<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 26 September 2017, and I convened a hearing 13 December 2017. DOHA received the transcript (Tr.) 22 December 2017.

---

<sup>1</sup>The record consists of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibit (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.

## Findings of Fact

Applicant admitted the SOR financial allegations, except for 1.e, 1.f and 1.q. At hearing Department Counsel withdrew SOR 1.f (as a duplicate of 1.k) and 1.q (as a duplicate of 1.e).

Applicant is a 51-year-old security officer employed by a defense contractor since August 2011. He was previously employed in a similar position from June 2003 to August 2011. He had a favorable clearance determination in May 2005. This is a periodic reinvestigation of that clearance. He has been continuously employed since at least June 2003.

The SOR alleges, and GE 2-5 establish, 15 delinquent debts totaling over \$58,000. Applicant admits 14 debts totaling over \$57,000. The SOR also alleges, and Applicant admits, two falsifications of his March 2015 (GE 1) clearance application.

Applicant disclosed SOR debt 1.a (\$36,120) on his March 2015 clearance application (GE 1).<sup>3</sup> Through an oversight, he did not disclose the judgment at SOR 1.i. (SOR 2.a).<sup>4</sup> He also did not disclose an October 1997 felony arrest on a charge that was later dismissed (SOR 2.b). That charge had been adjudicated previously during his 2005 background investigation. He said he misread the question.

After submitting his clearance application in March 2015, Applicant addressed a number of delinquent debts. He paid SOR debt 1.h in December 2015 (Answer). SOR debt 1.i was paid in May 2015, as were SOR debts 1.l-1.p (Answer). He paid SOR debt 1.j in October 2016 (Answer)<sup>5</sup>. He began making payments on SOR debt 1.k sometime in 2015.<sup>6</sup> He documented his pending October 2016 payment as part of his Answer. Applicant has had no arrears on his child support obligation (SOR 1.d) from December 2016 through December 2017 (AE A).<sup>7</sup>

---

<sup>3</sup>However, he disclosed none of the other delinquencies involving routine accounts alleged in the SOR, a failure the Government did not allege as a falsification.

<sup>4</sup>For that matter, he did not disclose his child support delinquency or his tax lien, also required to be disclosed as delinquencies involving enforcement.

<sup>5</sup>Which is the date of the letter from the collection agent. Applicant's March 2017 credit report (GE 3) reflects that the account was paid and closed in May 2016.

<sup>6</sup>Applicant's April 2015 credit report (GE 5) shows the original creditor selling the account to the SOR collection agent in April 2015, at the stated \$981 balance. His July 2016 credit report (GE 4) reports a reduced \$604 balance. His March 2017 credit report (GE 3) reports a March 2017 \$25 payment, reducing the balance to \$377. Finally, his December 2017 credit report (GE 2) shows a November 2017 \$25 payment, reducing the balance to \$176.

<sup>7</sup>In December 2014 Applicant was in arrears \$1,471.80. From December 2014 to September 2015, the arrears fluctuated between that figure and \$1,988.05, although the usual figure was \$1,839.80. Regular child support payments were being taken out of his pay check, and Applicant was unaware of the arrearage until sometime

Applicant has taken no meaningful action on SOR debts 1.a-1.c, e, and g. He did not describe any concrete plans for addressing those debts. Most of the delinquent debt is his individual debt. The largest single debt is for a voluntary automobile repossession (SOR 1.a). The second largest debt is for a loan he co-signed with his co-habitant (SOR 1.b). The third largest debt is a delinquent credit card account (SOR 1.c). All three accounts are with the same creditor. SOR debt 1.e is for a delinquent cellular telephone account that Applicant opened in his name, for the use of his co-habitant. He thinks she should pay the account. SOR debt 1.g is for an unpaid medical bill that Applicant claims should have been covered by insurance. However, he has not documented any efforts to communicate either with the insurance company or the provider. Applicant's former co-habitant filed for bankruptcy protection in 2014, extinguishing her liability for SOR debt 1.b.

Applicant discussed most of the SOR debts at length during a February 2016 interview with a Government investigator (GE 6)<sup>8</sup> based on the contents of his April 2015 credit report (GE 5). He described his repayment efforts as stated above.

Applicant traces his financial problems to breaking up with his long-term co-habitant (and mother of his two youngest children) in late 2009–early 2010. He has offered no explanation for his failure to address the SOR debts after 2010. He testified that he addressed small bills first, but it is clear that he did not begin to address the significant debts until he completed his March 2015 clearance application (Tr. 45). Still, his progress on his debts between March 2015 and the issuance of the SOR in September 2016 was impressive, and nearly complete.

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

---

in 2015, when he was contacted by the state support enforcement division. He began making catch up payments in person, and between September 2015 and March 2016, he reduced the balance to \$196.07. Applicant produced five receipts dated between late December 2015 and early March 2016 in his Answer. Between late March 2016 and late December 2016, he made smaller catch-up payments until the arrears were fully paid. When the SOR was issued, his arrears were less than \$100.

<sup>8</sup>He had two follow-up interviews with the investigator in February 2016 to reconcile duplicate accounts (GE 6).

denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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>9</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, but Applicant did not fully mitigate the security concerns. The SOR debts from 1.h through 1.p were either paid in full, or entered into a repayment plan, before the SOR was issued. Similarly, Applicant was addressing his child care arrears well before the SOR was issued, and had reduced them to less than \$100 at the time the SOR was issued. These allegations are easily resolved, without really getting to the mitigating factors. Nevertheless, the five debts he has not addressed have not been mitigated. The three debts to the single creditor, alleged as almost \$49,000, were charged off at almost \$57,000. The two smaller debts have not grown; neither have they been addressed.

The mitigating factors for financial considerations provide little help to Applicant for the debts that remain. These financial difficulties are recent and frequent, although the major cause maybe considered unlikely to recur.<sup>10</sup> Applicant's breakup with his co-habitant is a circumstance beyond his control, and he responsibly—if belatedly—dealt with the greatest number of his delinquent debts. However, he has not been responsible in dealing with the greatest balance of his debts.<sup>11</sup> It is not so much that he has not completely resolved the remaining debts. It is that he has not documented any efforts to put those debts next in line for resolution.

---

<sup>9</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<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;

Applicant has had no catch up payments on his child care obligations since December 2016, and no significant catch up obligation since March 2016. As of November 2017, he was within seven payments of having completely paid the only debt that was still on a payment plan (SOR 1.k). Applicant did not provide a financial statement or budget that would show if he had the means to begin to address the remaining debts, and seven of the eight debts that were paid were paid by December 2015. The last was paid in May 2016. Yet the funds that were collected to make those payments do not appear to have been diverted to other debts. Thus, regarding the remaining debts Applicant has not demonstrated any good faith efforts to resolve them.<sup>12</sup> The debts are clearly not being resolved.<sup>13</sup>

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.<sup>14</sup> Applicant's actions constituted such a plan and execution for the debts addressed before the SOR was issued, but not for the debts that remain. I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, because Applicant admitted the allegations. Nevertheless, I find Applicant mitigated the security concerns. Applicant disclosed the single largest delinquent debt on his clearance application, putting the Government on notice that he had financial problems. The alleged failure to report the judgment, or the un-alleged failures to report his child support arrears, tax lien, or the twelve other delinquent routine accounts add little to the relevance and materiality of his disclosure that he had financial problems. While I hesitate to say that an Applicant who disclosed only one delinquent account could never be alleged to have falsified his clearance application by omitting other financial problems, that conclusion is difficult to sustain on the facts of this case, where Applicant reported the largest delinquent debt. In similar fashion, Applicant's failure to report an 18-year-old, dismissed felony charge that was adjudicated in 2005 has little relevance or materiality ten years later. I do not find that Applicant's conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.<sup>15</sup> Accordingly, I resolve Guideline E for Applicant.

---

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

<sup>13</sup>¶ 20 (c) 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>14</sup>ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

<sup>15</sup>¶ 16 (a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-c, e, g:	Against Applicant
Subparagraphs f, q:	Withdrawn
Subparagraphs d, h-p:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraphs a-b:	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