



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



In the matter of:)	
)	
)	ISCR Case No. 07-02523
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Thomas G. Coale, Esquire, Department Counsel
For Applicant: *Pro se*

July 25, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 27 June 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.¹ Applicant submitted an undated answer received by DOHA 22 August 2007, and requested a decision without hearing. DOHA assigned the case to me 24 June 2008. The record in this case closed 18 May 2008, the day Applicant's response to the government's File of Relevant Material (FORM) was due. Applicant did not respond to the FORM.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations except for SOR 1.i., which she correctly asserted had been included in her September 2002 Chapter 7 bankruptcy discharge. The record also established that the debt alleged at SOR 1.f. was discharged in bankruptcy. She is a 54-year-old driver employed by a defense contractor since August 2006. She has not previously held a clearance.

As modified above, the SOR alleges, government exhibits substantiate, and Applicant admits, nine delinquent debts totaling over \$21,000—all of which became delinquent after her chapter 7 bankruptcy discharge in September 2002. Over \$15,000 of this new debt is for a state tax lien filed in February 2007. This lien has not been addressed. The remaining \$5793 appears to have been paid between credit reports dated 23 April 2007 (Item 8) and 19 March 2008 (Item 9), only to be replaced by five medical collection accounts totaling nearly \$1,300 (Item 9).

Applicant filed for chapter 7 bankruptcy protection in June 2002, seeking relief from over \$125,000 in liabilities. Those liabilities included \$101,173 in unsecured priority claims, of which \$91,134 was owed to the IRS for unpaid taxes, penalties, and interest for tax years 1990-1993. Those liabilities also included \$23,135 in unsecured claims to 22 creditors. Of those 22 creditors, 23 were readily identifiable with medical providers. Applicant reaffirmed one secured debt, for \$1,000, for her television. In September 2002, Applicant was discharged of her dischargeable debt, including—by special agreement with the U.S. Attorney—the \$91,134 in back taxes owed to the IRS.

Despite this fresh start, Applicant resumed having accounts referred to collections as early as November 2002. In March 2007, DOHA inquired about 15 debts that appeared on an October 2006 credit report (Item 7), some of which appear to be duplicate accounts. Three debts had been included in the bankruptcy, and at least one paid before the SOR was issued. Applicant attributed the IRS debt to their failure to get tax help when shuttering her husband's business in 1991-1993, and their medical debts to a previous employer's failure to pay their health insurance premium. However, the named employer does not appear on her clearance application (Item 5). Nevertheless, she stated her intent to obtain credit counseling to address her outstanding debts (Item 6).

It is not clear that the credit counseling ever occurred. Most of the debts that first appeared on Applicant's October 2006 credit report, remained on the three credit reports (one for each major credit reporting agency) she obtained for her April 2007 response to DOHA's interrogatories. Most of them remained on the May 2007 credit report obtained by the government just before issuing the SOR.

In her answer to the SOR, Applicant re-stated her intent to obtain credit counseling to address the debts she admitted. She also stated an intent to re-apply for her clearance in a year. The record contains no evidence that she obtained counseling, and although her March 2008 credit report suggests that the debts alleged in the SOR

have now been paid, there are new collection accounts. In addition, the March 2008 credit report covers only one of the major credit reporting agencies, which may not provide full coverage of Applicant's debts.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, 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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.²

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has a lengthy history of financial difficulties, which is ongoing.³ Although bankruptcy is a legitimate means of obtaining relief from indebtedness and a new start at putting an individual's finances in order, the record contains insufficient information to conclude that Applicant was not

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . .

responsible for the circumstances that ultimately caused her to seek bankruptcy protection. Even with the new start, Applicant has been unable to gain complete control over her finances. Indeed, it is not clear that Applicant has any control over her finances. More than half of her unsecured creditors in her bankruptcy were medical providers. Two-thirds of the creditors alleged in the SOR were medical providers. The six medical debts alleged in the SOR have been replaced by five more recent medical providers. Except for the debt at SOR 1.b., none of the medical debts have been particularly large, yet they have remained unpaid for significant periods of time.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁴ The debts were not due to circumstances beyond her control and she has not acted responsibly in addressing her debts.⁵ There is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁶ At best, eight of the nine debts have been recently paid, and those were not paid in a timely, good-faith effort.⁷ They were replaced by additional debt, and the state tax lien has not been addressed at all. Further, given her unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	For Applicant
Subparagraph g:	Against Applicant
Subparagraph h:	Against Applicant
Subparagraph i:	Against Applicant
Subparagraph j:	Against Applicant
Subparagraph k:	Against Applicant
Subparagraph l:	For Applicant

⁴¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁵¶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;

⁶¶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;

⁷,¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Subparagraph m: Against Applicant
Subparagraph n: Against Applicant

Conclusion

In light of all 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