



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



In the matter of:)	
)	
XXXXXXXXXX. XXXXXXXX XXXXX)	ISCR Case No. 07-09744
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

September 26, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 29 February 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.¹ Applicant answered the SOR 1 May 2008, requesting a hearing. On 18 July 2008, Department Counsel amended the SOR, and Applicant filed a timely answer. DOHA assigned the case to me 28 July 2008, and I convened a hearing 26 August 2008. DOHA received the transcript (Tr.) 8 September 2008.

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.c., 1.d., 1.e., 1.i., and 1.j., which he claims to have either paid or not owed in the first place. He is a 43-year-old senior facilities infrastructure analyst employed by a defense contractor since March 2007. He has not previously held a clearance.

The SOR alleges, and government exhibits confirm, 11 delinquent debts totaling just over \$35,000. Applicant admits six debts totaling over \$15,000. He disputes, with varying degrees of cause, five debts.

Applicant attributes his financial difficulties to his disintegrating marriage, travel expenses from flying coast-to-coast during his father's final illness, and loss of a job. However, the record demonstrates that his financial problems pre-date any of these events. His clearance application reflects that Applicant has been continuously employed, if occasionally underemployed, from May 1997 to the present, except for a brief period of unemployment April–July 2002. He claims to have mapped out his own re-payment plans for each creditor, beginning with his ex-wife, who he asserts will be paid off in the next seven months. He makes one-time payments on his other debts as finances allow, but otherwise intends to address his creditors seriatim, as he assesses the priority to be given to each. Nevertheless, he provided no proof of that plan or a budget that would permit him to achieve that plan.

Applicant's initial financial difficulties arose in the late 1990s, when the Internal Revenue Service (IRS) filed liens against Applicant for unpaid taxes, penalties, and interest for several tax years in the early-to-mid 1990s. This tax liability was incurred because Applicant withheld insufficient tax to cover his liability. Applicant claims, without corroboration, to have entered into a repayment agreement with the IRS, and to have made regular payments on that plan until late 2000-early 2001, when he and his wife began experiencing financial difficulties. Applicant has not explained what those financial difficulties were. He claims that he had reduced his IRS debt to \$2,500 by the time he stopped making payments.

Applicant married in May 2001, having begun living with his wife and sharing living expenses in May 2000. They separated in spring 2005, and were divorced in December 2006. Although Applicant claims to have been obligated to pay his ex-wife about \$39,000 (which Applicant claims to have reduced to about \$8,000), his divorce decree (A.E. A) only obligates him to pay \$6,900 to her directly. The decree does obligate him to share certain community debts with her, including an even split of nearly \$36,000 to the IRS for tax years 2003 and 2004. Decree provisions providing no spousal support for either note that both were employed, self-sufficient workers during their marriage.

Between February and April 2005, Applicant traveled across country to be with his seriously ill father. With the increasing expense of travel, and the worsening

conditions of his father, Applicant relocated to be with him. His father died in June 2005. From April 2005 to November 2006, Applicant worked part-time at a second job.

Except for his claimed payments to his ex-wife, Applicant is not currently paying on any of the debts that he acknowledges owing. In November 2007, he documented one-time “down payments” to two creditors, and repayment agreements with the collection agent for another two creditors that obligated Applicant to pay \$100 per month per each account (A.E. B). He made the required payments for a couple of months and then stopped. In addition, Applicant has two unresolved traffic offenses (SOR, ¶ 2), that could be resolved easily except that Applicant lacks the money to pay the associated fines. Although he claims to live frugally, his clearance application indicates he took three Caribbean vacations in October 2004, November 2005, and September 2006.

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 guidelines are Guidelines 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 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

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

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. The short summary is that government records, and Applicant's own documents, establish his accumulated indebtedness over several years. He failed to corroborate either his claimed reasons for the indebtedness or his efforts to address his debts.³ Applicant's brief unemployment probably contributed to his financial difficulties, as did no doubt his father's illness and his separation and divorce. But Applicant was having financial problems before any of these events occurred. He had a tax lien from the IRS before he married, and the fact that he was able to make payments on an agreed plan with the IRS, does not obscure the fact that he both under withheld his federal tax for several years, and apparently lacked the resources to pay the delinquent taxes without entering into a repayment plan. Further, he stopped paying on this debt when he and his wife began experiencing undescribed financial problems, before they were married. Even if I accepted Applicant's characterization that the debts were due to circumstances beyond his control, Applicant had the burden to demonstrate that he had taken responsible action to address the debts. He has not done so. The most important of his assertions remain uncorroborated. He did not document either the debt to his ex-wife or the payments to her that prevent him from addressing the debts he does acknowledge.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁴ The debts were not entirely, or even substantially, due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.⁵ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁶ The few haphazard payments he has made do not constitute a good-faith effort to satisfy his debts.⁷ Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. The traffic violations are minor enough,

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; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; (f) financial problems that are linked to . . . gambling problems;

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.

but his failure to deal with them in a timely manner shows poor judgment.⁸ But the real security significance of these violations is to highlight Applicant's financial difficulties, because he lacks the financial means to address these offenses. I resolve Guideline E 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: Against Applicant
Subparagraph h: Against Applicant
Subparagraph i: Against Applicant
Subparagraph j: Against Applicant
Subparagraph k: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: 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

⁸¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . ;