



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



In the matter of:)
)
 XXXXXX, XXXXXXXX XXXX) ISCR Case No. 14-04691
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Jacob Ranish, Esquire

05/19/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 9 December 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 27 March 2015, and I convened a hearing 22 April 2015. DOHA received the transcript (Tr.) 29 April 2015.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-2, and Applicant exhibits (AE) A-I.

²DoD 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 the SOR allegations. He is a 42-year-old senior software developer employed as a defense contractor since February 2012. He has been similarly employed with five other companies since August 2000, each time in a progressively more responsible position. He has been continuously employed since at least January 1998. His current salary is nearly \$125,000 per year, and has been at that level for several years. He seeks to retain the clearance he obtained in approximately July 2002.

The SOR alleges, Government exhibits (GE 1-2) establish, and Applicant admits six delinquent collection accounts totaling nearly \$56,000. Applicant paid two accounts totaling \$450 [SOR 1.b (AE G) and 1.d (AE D)] in February 2015. He paid \$5,000 to settle the judgment for SOR debt 1.a (a 42% discount; AE A) with payments in February and March 2015. He borrowed, or was gifted, the \$5,000 from his fiancée. He paid \$7,500 to settle SOR debt 1.c (a 75% discount; AE B, C) in February 2015. He borrowed from his retirement plan to make that payment (Tr. 37). In March 2015, he contacted the Internal Revenue Service to make payment arrangements for his delinquent Federal taxes for 2011 and 2012 (AE E). Presumably, his \$17,000 tax debt [now grown to \$28,000 (Tr. 30)] will be reduced by the seizure of his expected 2014 IRS refund of \$6,800 (AE F). Although Applicant has not heard back from the IRS, he has budgeted a \$560 monthly payment for his back taxes (AE H). In April 2015, Applicant began an online course in personal finance (AE I). Applicant reports \$1,175 positive monthly cash flow (AE H).

In addition to the debts alleged in the SOR, Applicant's credit report (GE 2) reflects three additional accounts which he settled for less than full value: a delinquent credit card account, a repossessed automobile, and a short sale of his house. Applicant's October 2013 clearance application (GE 1) reported significant financial problems, specifically the short sale of his house, his automobile repossession, his delinquent taxes for 2011 and 2012, and the two large debts he later settled in February and March 2015. In all, he reported the debts underlying SOR allegations 1.a, 1.c, 1.e, and 1.f.

Applicant married in December 2000. He and his wife have three children, ages 13, 10, and 6. Applicant left his wife in September 2010, because he did not love her and was uncomfortable remaining in the marriage. He and his wife reached a separation agreement which specifies Applicant's child support and alimony obligations (Tr. 42). Applicant is now engaged to be married, and has lived with his fiancée since September 2014 (Tr. 39, 56). Applicant expects to divorce his wife in the next year or so (Tr. 44).

Applicant had no history of financial difficulties until he separated from his wife in September 2010. He was making \$100,000 per year when they separated (Tr. 24). Applicant moved into an apartment. His wife was supposed to make the \$2,128 monthly

mortgage payment (GE 2), but she did not. Consequently, the mortgage became past due, but had not been foreclosed upon. The debt was resolved through a short sale of the property.

Applicant attributed his financial problems to the unanticipated, but necessary, expenses of his separation: the costs of leaving the marital home and the costs of supporting his wife through alimony and his children through child support. The settlement agreement required him to pay \$2,700 monthly child support and \$500 monthly alimony. Applicant's wife had worked part time during the marriage, but her salary was not a significant contributor to family finances. She lost that part-time job in early 2011.

Applicant provided no work or character references aside from his fiancée, who considers him honest and trustworthy. Outside of the recently-begun financial planning course, Applicant has not previously had any credit for financial counseling.

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.³

³See, *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. Between at least September 2010 and February 2015, Applicant failed to keep up with his financial obligations or to resolve them when his accounts became delinquent, despite possessing the apparent means to do so.⁴ That Applicant reached a settlement agreement with his wife regarding child support and alimony outside a judicial proceeding does not obviate the fact that these are legal obligations of his no less than the SOR debts. However, Applicant has not documented how the alimony and child support payments limited his ability to keep current on the SOR debts or to reach repayment agreements with the original creditors. Nor has he demonstrated any efforts to communicate with his creditors to make repayment arrangements before he received the SOR in January 2015. The settlement agreements he reach on the two large debts were with successors-in-interest to the original creditors.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, even if the stated cause is unlikely to recur.⁵ Applicant's separation from his wife, albeit at his instigation, can still be considered a circumstance beyond his control. However, Applicant has not shown that he was responsible in dealing with his debts, either in his efforts to keep the accounts current or his efforts to negotiate repayment terms once the accounts fell delinquent. For example, nothing prohibited Applicant from making regular payments on his IRS accounts pending any application for, and approval of, an installment payment plan. Moreover, he took no meaningful action to address the SOR debts until several weeks before the hearing.⁶

Further, the payments he made on the eve of the hearing cannot be considered good-faith payments, coming as they did late in a response to financial problems that he acknowledged in October 2013, when he listed most of them on his clearance application, and that he was fully aware were raising concerns for his clearance once he received the SOR in early January 2015.⁷

Applicant's willingness to enter into a separation agreement with his wife, to address his legal obligations to her and their children short of divorce proceedings, is commendable. But, it does not absolve him of his legal obligations to his other creditors.

⁴¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

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

⁶¶ 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;

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

Moreover, he has not demonstrated that his changed circumstances prevented him from making any arrangement at all with his creditors.

Applicant's actions since he received the SOR bespeak more an effort to check off as many of the mitigating conditions as possible than a good-faith effort to address his indebtedness. Applicant is a well-educated man. The things he claimed to be learning in his personal finance course are things he almost certainly already knew. Further, that course was only undertaken in the month before this hearing.⁸

The concern with Applicant is that while he may credibly state his intent to avoid financial problems in the future, and he may have the means overall to do so, he does not actually have any track record of doing so after he and his wife separated. In addition, the funds to settle one of the delinquent accounts came from a gift/loan from his fiancée. The other funds came from a loan from his retirement account. Moreover, although Applicant achieved a separation agreement with his wife with reasonable amicability, unless the terms of that agreement contemplate incorporation into a final divorce settlement, there is no guarantee that the divorce proceedings will be as amicable. Further, Applicant has provided no character and employment evidence upon which I could reasonably support a "whole person" analysis in favor of granting his clearance. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-f:	Against 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

⁸¶ 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;