



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



In the matter of:)	
)	
XXXXXXXX, Xxxxxx Xxxxxxx)	ISCR Case No. 14-04938
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: Jacob T. Ranish, Esquire

02/03/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s clearance is granted.

On 18 May 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) 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 17 August 2015 and I convened a hearing 16 November 2015, by video-teleconference. DOHA received the transcript 25 November 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibits (HE) I-IV, and Applicant exhibits (AE) A-N. AE N was timely received post-hearing. The record in this case closed 4 December 2015, when Department Counsel did not object to AE N.

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 denied the SOR financial allegations. He is a 47-year-old senior support engineer employed by a U.S. defense contractor since April 2008. He has been continuously employed since March 1998 in similar positions with other contractors (GE 1), after serving on active duty with the U.S. military for eight years, January 1990-January 1998 (AE K). He is a highly-decorated veteran (AE K). He seeks to retain the clearance he has held, as necessary, since he was on active duty. He has no reported security violations.

The SOR alleges, and Government exhibits substantiate, two delinquent accounts totaling nearly \$250,000. Nearly \$239,000 of that debt is for a delinquent home equity loan.³ The other debt is for a delinquent credit card.⁴ Department Counsel withdrew SOR allegation 1.c (Tr. 87), in the face of record evidence establishing that the November 2012 chapter 13 bankruptcy filing (GE 6) was a fraudulent filing by Applicant's ex-wife, whom he divorced in November 2009 (AE C).⁵ Applicant reported delinquent mortgage and home-equity loans totaling over \$500,000 on his May 2012 clearance application (GE 1). His July 2012, May 2014, and February 2015 credit reports (GE 3-5) show several debts that were delinquent but which are now current.

Applicant resolved the delinquent debt at SOR 1.a in November 2010 (AE A, N).⁶ Applicant's 1099-A (AE A) reflects resolution of an outstanding \$238,858 loan on a property valued at \$404,463. Applicant's July 2012 credit report (GE 3) shows a home

³Applicant took out a home equity loan in about 2006 on a home owned in his name only, for him and his wife to purchase a fast-food franchise, which she would run while Applicant was deployed overseas. The seller went bankrupt, so Applicant and his wife lost whatever down payment they had made on the purchase. However, Applicant's wife essentially absconded with the money. She cashed checks for the exact amount of the mortgage so Applicant would think the mortgage was being paid when he looked online at their joint account. She cashed similar checks for their utilities. When Applicant returned home in January 2007 on leave, he discovered the delinquent accounts, had an argument with his wife, and left the marital home.

⁴The Government's evidence fails to document a \$10,868 charged-off account. GE 3-5 report a credit account with the creditor in SOR 1.b that has never been reported delinquent, with an account number that tracks through each credit report. GE 5 shows for the first time an account matching the creditor alleged in SOR 1.b with a different account number, with both an \$18,868 charged off balance and a remaining \$2,668 balance. However, GE 5 also shows Applicant making \$1,000 monthly payments. Moreover AE B reflects that an account matching both the creditor alleged in SOR 1.b and the account number contained in GE 5 was paid in full in April 2015, before the SOR was issued.

⁵The marital settlement agreement (AE D) executed in November 2009, just before their divorce decree was entered, provided that Applicant's wife could live in the marital home until July 2010, at which point she would vacate the home. Applicant was obligated to pay the mortgage during this time.

⁶Internal Revenue Service Form 1099-A is required to be filed by a lender when the lender acquires an interest in property that is security for a debt, in full or partial satisfaction of the debt. See, 2010 Instructions for Forms 1099-A and 1099-C, Cat. No. 27991U. If, in the same calendar year, the lender cancels a debt in connection with a secured debt, the lender is not required to file both a form 1099-A and 1099-C, but may file Form 1099-C only. In either case, the lender must furnish a copy of the Form 1099 file to the borrower. Applicant did not receive a Form 1099-C for this property, only a Form 1099-A (Tr. 39, 59, 71-72).

equity loan with that balance in collection, with an account number that matches the account number in the lender's December 2015 letter to Applicant (AE N), stating that the account has a zero balance and should be reflected on his credit reports as "Closed-Foreclosed."⁷ The same credit report also shows the underlying first mortgage as "Closed Foreclosure Redeemed" as of April 2010.

Applicant resolved SOR debt 1.b in April 2015 (AE B, N). Applicant testified (Tr. 62) that he began making \$1,000 monthly payments on the account in September or October 2012—a claim confirmed by Applicant's February 2015 credit report (GE 5).

The debts arose out of a marital betrayal by Applicant's ex-wife, and his subsequent divorce from her. Applicant's wife unlawfully opened accounts in his name. Applicant made a criminal complaint (AE E), and also reported the fraudulent activity to the major credit bureaus (AE F-I).

Applicant's four coworkers, including the captain of the vessel he regularly deploys on to perform his job, consider him honest and trustworthy, and recommend him for his clearance (AE L). However, none of them appears to be aware of the financial issues alleged in the SOR. His most recent performance appraisal is excellent (AE M). Applicant's July 2014 personal financial statement (GE 2) reflects over \$2,700 positive monthly cash flow.

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(a). 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,

⁷The lender also stated that it would update the three credit bureaus accordingly.

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.⁸

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced financial problems when his wife converted the proceeds from a home equity loan that was to be used to establish a business to her personal use, and stopped paying the mortgage and other household expenses while Applicant was deployed overseas.⁹ By the time Applicant discovered this fact, his finances were in substantial disarray.

The mitigating factors for financial considerations give Applicant considerable aid. While his financial difficulties are both recent and multiple, Applicant’s employment has been stable, and he is now divorced; so the circumstances that caused them are less likely to recur.¹⁰ Further, his financial problems were largely due to circumstances beyond his control, and he began addressing his delinquent debts once he became aware of his wife’s behavior. He resolved numerous collection accounts reflected in GE 3, well before the SOR was issued. The two debts alleged in the SOR were also resolved before the SOR was issued.¹¹ While there is no evidence that Applicant has had any financial counseling, he has clearly acted to get his finances under control.¹² His efforts to resolve his delinquent debts, including debts that he may not have been legally responsible for, long before the SOR was issued certainly constitute good-faith efforts to resolve his debts.¹³ 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.¹⁴ In this case, Applicant does not require the benefit of this analysis because he addressed the SOR debts, and other debts not alleged in the SOR, before the SOR was issued. Nevertheless, Applicant’s efforts to date would

⁸See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

¹¹¶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;

¹²¶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;

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

¹⁴ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

constitute such a plan, and his consistent payments would reflect significant actions. Moreover, Applicant's favorable work references, his documented good employment evaluations, and the absence of any security clearances since 1990, provide ample support for a "whole-person" analysis in favor of granting his clearance. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-b:	For Applicant
Subparagraph c:	Withdrawn

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge