



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



In the matter of:)	
)	
XXXXXX, Xxxxxx Xxxxxx)	ISCR Case No. 14-04959
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

02/19/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 16 January 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 15 August 2015, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 23 December 2015.

¹Consisting of the File of Relevant Material (FORM), Items 1-5.

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 financial allegations. She is a 34-year-old security guard employed by a U.S. defense contractor since March 2003. This is a periodic reinvestigation of a clearance she was granted in the past.

On 5 February 2014, Applicant entered into a debt-negotiation agreement with a debt relief program (DRP) whereby Applicant would make regular deposits into a savings account and the organization would negotiate with Applicant's creditors to resolve her delinquent debts (Answer, Item 1). Applicant enrolled SOR debts 1.a-1.f and 1.i, totaling \$18,538.80.³ She also enrolled one debt not alleged in the SOR.

On 20 February 2014, Applicant executed her clearance application (Item 2). She reported SOR debts 1.b-1.f and 1.i, totaling \$16,691. She acquired SOR debts 1.d and 1.i because she was helping family members financially. She incurred SOR debts 1.b-1.c and 1.e-1.f because her financial assistance to family members left her unable to meet her own obligations (Item 2). The debts fell delinquent between February and November 2010, and in September 2011. Applicant reported that she had entered a DRP, and was paying \$448 per month toward settlement of her debts.⁴

On 26 March 2014, Applicant was interviewed by a Government investigator (Item 3). After discussing and acknowledging the six debts she had listed on her clearance application, the investigator confronted her with other unlisted debts, using her 8 March 2014 credit report (Item 4) as the basis for the questions. Applicant acknowledged the other six SOR debts (SOR 1.a and 1.g-1.k). She attributed her delinquent debts to her bills piling up. She did not repeat her claims of providing financial assistance to family members. She could not always say for sure whether she had received delinquency notices from her creditors. Yet she knew she had delinquent debts on 5 February 2014, when she entered the DRP.

The SOR alleges, Government exhibits (Items 2-5) substantiate, and Applicant admits 12 delinquent debts totaling nearly \$18,000. Applicant's Answer documented that SOR debt 1.b was settled for approximately 50% of the creditor's listed balance on 13 June 2014.⁵ The DRP settled SOR debt 1.e for approximately 40% of the creditor's

³Unless otherwise indicated, all references to specific correspondence or payments are from the supplemental materials Applicant submitted with her Answer.

⁴Applicant's payment records (Answer) show that she was paying \$424.13 every four weeks (Applicant was paid every two weeks) from 14 February 2014 through the first pay period in July 2014. There is a gap in her records from 16 July 2014 to 1 August 2014, when her account may have had a zero balance. Beginning 1 August 2014, Applicant made alternating payments of \$220.52 and \$230.37 every two weeks through 21 January 2015.

⁵The listed balance on the creditor's settlement offer was more than the amount alleged in the SOR, but less than the amount Applicant enrolled in her DRP. The settlement was effectuated by the DRP.

listed balance on 17 April 2014.⁶ Applicant's 26 June 2015 credit report (Item 5) shows SOR debt 1.f as a paid charge off, with a last payment in March 2015. Applicant made a reduced payment of \$73.44 to settle SOR debt 1.g. However, the payment receipt is undated. Applicant claimed to have paid SOR debt 1.h in February 2014 (Item 3), but provided no documentation. At the time of her 9 February 2015 Answer, she claimed to be awaiting paperwork. This was because she did not pay this debt until 25 February 2015 (Item 5). Applicant documented that she paid SOR debts 1.i and 1.j on 18 July 2014 (Answer). She paid SOR debt 1.k on 19 July 2014. The DRP settled SOR debt 1.l for approximately 45% of the creditor's listed balance with a single payment on 25 April 2014. The DRP also made six monthly payments from July through December 2014 to settle a non-SOR debt for approximately 40% of the creditor's listed balance (Answer).

SOR debts 1.a, 1.c, and 1.d, totaling \$5,816,⁷ remain unresolved. A 30 January 2015 account activity statement from the DRP showed that she had \$1,427.62 in her account through 21 January 2015. She was scheduled to make another \$4,508.90 in deposits through the end of October 2015. However, she provided no corroboration of these claims. She appears to have incurred the education loans between January 2003 and April 2008, while she was in school earning her associate's degree, which she obtained in April 2008.

Applicant has not documented any contact with her creditors since her last monthly payment was made on the non-SOR debt in December 2014. Her 26 June 2015 credit report (Item 5) confirms that a last payment was made on SOR debt 1.f in March 2015. She provided no budget or financial statement. Applicant has not documented any financial or credit counseling. She provided no work or character references, or evidence of community involvement.

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).

⁶The DRP was to make six roughly equal payments from April through September 2014. Applicant's payment records show that five of the six payments were made. The missing payment would have fallen in the payment records gap from 16 July 2014 to 1 August 2014. However, Applicant's 26 June 2015 credit report (Item 5) shows that this account was paid in September 2014 for less than the full amount.

⁷Enrolled in the DRP for \$6,734.

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, 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, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties dating back to at least February 2010.⁹ I find Applicant's efforts to resolve her debts to be driven by her concerns over her security clearance, and not by any motivation to deal with her debts responsibly. Based on the sequence of events, I infer that sometime before 20 February 2014, Applicant's company informed her that her clearance was due for periodic reinvestigation. Knowing that she had eight debts that remained unresolved for more than two years, she engaged the services of a DRP to resolve those debts. However, she only reported six of those debts on her clearance application. During her March 2014 subject interview, she learned of other delinquent debts, including SOR debts 1.g-1.k. She resolved three of those debts in July 2014, resolved one at an undetermined time, and paid the last in February 2015.

Applicant meets none of the mitigating conditions for financial considerations. Her financial difficulties are both recent and multiple, and to the extent that her problems seem to be related to her inability or unwillingness to live within her means, they are likely to continue.¹⁰ The root of her financial problems was the financial assistance she gave to family members. That is a choice she made, not a circumstance beyond her control.¹¹ Moreover, she provided no background or context for the claimed financial assistance. Applicant has had no credit or financial counseling. Applicant has resolved

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;

nine of the 12 alleged debts, as well as at least one debt not alleged in the SOR.¹² However, it is difficult to give her much credit for these efforts, clearly undertaken with her periodic reinvestigation. Consequently, I do not consider these efforts to constitute a good-faith effort to address her debts.¹³ Moreover, Applicant has no demonstrated track record of living within her means. Furthermore, Applicant provided no information upon which I could conduct a favorable “whole-person” analysis. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-l:	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

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.