



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXXXXXXXXX.)	ISCR Case No. 16-03957
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro Se*

01/17/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 31 January 2017, 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 26

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant Exhibits (AE) A-I. AE I was timely received post hearing. The record in this case closed 9 January 2018, when Department Counsel noted no objection to AE 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. However, on 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. My decision is the same under both guidelines.

September 2017 and I convened a hearing 20 December 2017. DOHA received the transcript 2 January 2018.

Findings of Fact

Applicant admitted the SOR allegations, except SOR 1.i. He is a 30-year-old call center analyst employed by a U.S. defense contractor since December 2016.³ He was employed in less-well-paid positions since March 2004. He has previously had a favorable background investigation in November 2007, when he worked for the Government. This is a periodic reinvestigation of that clearance (GE 1).

The SOR alleges, Government exhibits substantiate, and Applicant admits 22 delinquent debts totaling over \$35,000. The debts comprise \$2,300 in delinquent traffic tickets (SOR 1.k-1.v), four delinquent education loans totaling \$23,051, and six commercial credit accounts. SOR 1.i appears as a current account in Applicant's April 2014 credit report (GE 4) with a \$335 balance; Applicant's November 2016 credit report (GE 3) reports that the account was charged off and transferred to another lender, but with no stated balance.⁴

Applicant reported five delinquent debts on his April 2014 clearance application (GE 1), including SOR 1.c, 1.e, 1.j, and 1.w. At the time, he claimed to have been making payments on SOR 1.c, and to have made payment arrangements with the other creditors. He discussed these debts, and was confronted with the remaining SOR debts, during a May 2014 interview with a Government investigator (GE 2), based on his April 2014 credit report (GE 4). He repeated his claimed payments on SOR 1.c, and stated his willingness and ability to address the SOR debts. In his Answer, Applicant claimed to be working with a financial planner to address SOR 1.a, 1.b, 1.d, and 1.j. He claimed to be paying on SOR 1.g and 1.h, to have made a payment plan on SOR 1.c and 1.f, and to be in the process of contacting the SOR 1.e creditor. Except as noted below, Applicant has corroborated none of these claims.

Applicant began a new repayment plan on SOR debt 1.c in February 2017, and is current on his payments through December 2017 (AE A). SOR debts 1.e and 1.f are to the same original creditor, with 1.f being held by a collection agent. The accounts have different account numbers, so I cannot determine that the accounts are the same. Applicant claims to be making payments on 1.f, but the credit reports do not appear to confirm that, and Applicant provided no corroboration. Similarly, Applicant claimed to be making payments on SOR debts 1.g, 1.h, and 1.w, but provided no corroboration. He claimed (Tr. 25, 27) that he had disputed or paid the traffic tickets (SOR 1.k-1.v), but

³This is a different contractor than originally sponsored his April 2014 clearance application. At that time, he was employed at a lower wage than currently, and had been briefly unemployed from October to December 2012. He was also unemployed from May to November 2016 (Tr. 29), during which time he drew unemployment.

⁴Applicant claimed that the account was paid (Answer), but provided no documentation. Applicant's December 2017 credit report (AE E) shows the account closed in September 2014.

provided no documentation aside from the fact that the tickets do not appear on his December 2017 credit report (AE E).⁵ The education loan at SOR 1.j was satisfied with a final payment in January 2018 (AE I).⁶

Federally guaranteed student loans are difficult to track through credit reports because of the way the loans are issued, defaulted, consolidated, and rehabilitated, seldom with the same account numbers attached to the accounts. Applicant's April 2014 credit report shows six education loans, with complete account numbers, issued by the creditor at SOR 1.a, 1.b, and 1.d. The entries report only the original loan amounts because each of the accounts was 120-days past due, and had been transferred to another office. However, those original loan amounts correspond exactly to the six loans that have been consolidated on Applicant's December 2017 account statement from the rehabilitation collection agent (AE B). The statement reflects no past-due amounts, and an upcoming \$5.00 payment.⁷ These six loans cannot be tracked through the Applicant's November 2016 credit report (from which SOR 1.a, 1.b, and 1.d are taken) because that credit report uses only the first four digits of the account number, which is the same for all three accounts, bears no correlation to the original account numbers, and are the same original loan amounts—only one of which matches an original loan amount in AE B. Nevertheless, I conclude that six loans listed in AE B cover the SOR amounts alleged in 1.a, 1.b, and 1.d.

Applicant attributed his financial problems to his ignoring his financial obligations for many years (Tr. 24). He particularly ignored his education loans, but was generally not paying attention to his finances (Tr. 48-49). He did not begin to systematically address his debts until after he received the SOR (Tr. 24, 69). He claims that he has been working hard on his credit since then (Tr. 26, 60).

Applicant documented no credit or financial counseling, and did not submit a budget, although he claimed to have one (Tr. 60). He claimed (Tr. 69) to have briefly looked into credit counseling in February 2017, but did not really work with them. He claimed to have worked with a credit repair company (Tr. 29) but had no documentation. Throughout his hearing, he claimed to have paid debts, or be paying debts, that he had

⁵Several of the SOR debts are still reported delinquent on this credit report. There are also new delinquent debts, which Applicant acknowledges (Tr. 57-58). I have not considered these debts on the merits of the case, but they are relevant to show Applicant's state of mind.

⁶The account number in AE I matches that on GE 3. Given the amount of the debt as of November 2016, I infer that Applicant was making payments on this account before the SOR was issued.

⁷When loans are placed in rehabilitation, the lender sets an arbitrarily-low monthly payment to ensure that the loans can be successfully rehabilitated before the account is transferred to the collection agent—with a substantially higher monthly payment. In this case, when he first contacted the creditor in February 2017, the account was transferred to a rehabilitation collection agent, where Applicant made \$5 monthly payments from approximately February to November 2017 (Tr. 45-46; 61). The account was then sent to a second rehabilitation collection agent (AE B), where the required \$5 payment for December is the first of three \$5 payments required before the loans are sent to the permanent servicer, where the monthly payment is expected to be \$206 (Tr. 61-65).

receipts for, but he never submitted them. Applicant's fiancée is somewhat aware of the SOR, and says Applicant is working on his financial problems. They share expenses (Tr. 80-85). Applicant claims \$1,000 monthly positive cash flow (Tr. 43). He 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).

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 failed to mitigate the security concerns. Applicant accumulated significant delinquent debt, including Federally-guaranteed education loans, and largely ignored his financial obligations until after he received the SOR, despite having discussed these debts with a Government investigator in May 2014.⁹

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

⁹¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations;

Applicant meets none of the mitigating conditions for financial considerations. The conduct was recent, frequent, and the circumstances were not unusual.¹⁰ Moreover, the circumstances of his financial problems were certainly within his control, and he was irresponsible in addressing his debts until after he received the SOR.¹¹

Applicant has neither claimed nor documented any credit or financial counseling, and there is a dearth of evidence to show that his financial problems have been resolved or are under control.¹² This failure of evidence precludes a conclusion that Applicant has made a good-faith effort to address his debts.¹³ The Government is not the collection agent of last resort. Applicants are expected to meet their financial obligations for moral reasons and legal requirements. Applicant's belated efforts to address his education loans have reached the point where he is on the cusp of regular payments, but he has no established track record of payments. The few months of \$5 payments are not sufficient. With the possible exception of SOR debts 1.i and 1.j, all of Applicant's efforts to address his debts were belated. Moreover, he submitted no work or character evidence which might support a whole-person assessment to overcome the security concerns raised by his conduct. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-h, k-w:	Against Applicant
Subparagraphs i-j:	For Applicant

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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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