



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 16-04112
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert B. Blazewick, Esquire, Department Counsel
For Applicant: Leon J. Schachter, Esquire

02/26/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 4 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

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant Exhibits (AE) A-M. AE L was admitted for the sole purpose of identifying AE A-K for the record (Tr.17-18). AE M was timely received post hearing. The record in this case closed 30 January 2018, when Department Counsel noted no objection to AE M. I amended the SOR to add the March 2018 Chapter 13 bankruptcy petition, based on Applicant's AE I (Tr. 90-92).

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.

Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 27 September 2017 and I convened a hearing 5 April 2018. DOHA received the transcript 17 April 2018.

Findings of Fact

Applicant admitted the SOR allegations. He is a 63-year-old aircraft mechanic employed by a U.S. defense contractor since June 1992.³ He has previously had favorable background investigations in July 2002 and August 2013. The genesis of the current background investigation is unclear (GE 1).

The SOR alleges, Government exhibits substantiate, and Applicant admits eight delinquent debts totaling over \$99,000. The debts comprise \$200 in delinquent traffic tickets (SOR 1.k-1.l),⁴ a \$2,700 state tax lien (SOR 1.j),⁵ four delinquent medical accounts totaling nearly \$1,400 (SOR 1.f-1.l),⁶ and a delinquent education loan totaling over \$95,000 (SOR 1.e).⁷ The SOR also alleges, Government and Applicant exhibits establish, and Applicant admits filing for Chapter 13 bankruptcy protection five times between August 1998 and March 2018 (SOR 1.a-1.d and 1.m). The March 2018 filing was pending approval (AE I); the October 2013 filing was converted to a Chapter 7 petition in March 2014, and discharged in November 2014. The August 1998, October 2000, and September 2011 petitions were dismissed in October 1999, June 2001, and March 2013, respectively.⁸ Applicant completed the bankruptcy-required financial counseling in February 2018 [AE C(2)], and another financial counseling in March 2018 [AE C(1)]. His tentative Chapter 13 plan anticipated the creditors' meeting later in April

³He has also been self-employed in the vending machine business since April 2010.

⁴Paid by Applicant on 2 February 2017 (Answer, AE H). The amounts and creditor are an exact match.

⁵AE G, a 26 February 2018 letter from the state tax authority, reflects an agreement to pay \$121.50 toward a \$716 tax liability. However, the account number listed is not the same as that listed on GE 2 and 3 for SOR debt 1.j. Moreover, Applicant did not document any of the required payments for February and March 2018.

⁶Applicant paid SOR 1.i on 30 January 2017 (AE F). He paid SOR 1.h on 30 January 2017 as well (Answer, AE E). He paid SOR 1.g the same day (Answer). He offered AE M(10) as proof that SOR 1 f was paid on 15 February 2017, but the amounts do not match and GE 3 contains no account number for the account.

⁷AE M(14) reflects that Applicant entered into a rehabilitation agreement on 24 June 2014 in which he was to pay \$5.00 monthly beginning 25 June 2016, and continuing until he made nine voluntary and on time payments within a ten month period. AE D confirmed his entry into the program. AE M(9) shows that he made 13 \$5.00 payments between June 2017 and February 2017, at which point the rehabilitated loan was apparently purchased by another lender in accordance with the rehabilitation agreement. The outstanding balance for the loan when it went into rehabilitation was \$92,421.46, almost the amount listed on Applicant's March 2018 petition (AE I, M(15) under a different creditor, presumably the successor-in-interest.

⁸The August 1998 and October 2000 petitions were dismissed when Applicant received insurance settlements which allowed him to repay his creditors. The September 2011 petition was dismissed when Applicant was able to gather the funds necessary to repay his creditors.

2018, with confirmation in May 2018. The plan called for \$700 monthly payments, and Applicant made the first required payment the week after the hearing [AE M(12)].

Applicant reported his two most recent (at the time) bankruptcy petitions on his June 2015 clearance application (GE 1). He resolved approximately \$60,000 in debt in his September 2011 Chapter 13 petition, and resolved approximately \$70,000 in debt in his November 2014 Chapter 7 discharge. His pending Chapter 13 petition lists approximately \$135,000 in unsecured claims, of which over \$93,000 are an education loan and another nearly \$9,000 are to state and Federal tax authorities. Neither of these debts is likely to be dischargeable. Applicant documented that he had an installment plan with the Internal Revenue Service (IRS), and made his \$100 July 2017 payment as required [AE M(11)]. However, his balance at the time was over \$9,000.⁹

Applicant's financial problems predate his August 1998 Chapter 13 bankruptcy petition. He and his wife have been plagued with a seemingly endless string of accidents, injuries, and illnesses.¹⁰ The August 1998 petition was precipitated by an automobile accident that left her unable to work for two years (Tr. 25), but was dismissed in October 1999 when the case settled and Applicant was able to pay his creditors. Similarly, the October 2000 petition was precipitated by another accident that left his wife unable to work for a long time; additionally, Applicant had an illness that required a week in the hospital. However, the petition was dismissed in June 2001 when the case settled and Applicant was able to pay his creditors.

Nevertheless, their medical adventures continued: in 2003, their minor child had a burst appendix and was hospitalized for three weeks; in 2004, Applicant's wife had additional knee surgery from the earlier accident, and Applicant had pneumonia. He missed time at work, which was unpaid because he had used all his accumulated time off. Applicant's wife had another accident in 2005, had major breast cancer surgery in 2007, costing \$30,000 out of pocket, and another accident. She had more knee surgery in 2008 and a knee replacement in 2009.

Applicant had a collapsed lung in 2010, three surgeries to repair it, and six more weeks out of work. In 2011, he had another bout of pneumonia, and was out of work another three weeks. He filed for Chapter 13 bankruptcy again in September 2011, but was able to catch up on his payments to his creditors and have the petition discharged in March 2013 (Tr. 53). Meanwhile, in 2012, he developed knee problems himself which required surgery. He filed another Chapter 13 petition in October 2013, converted it to a Chapter 7 petition in March 2014, when he realized that he would not be able to make the required plan payments, and was discharged of his dischargeable debt in November 2014.

⁹He listed \$10,000 IRS debt on his March 2018 Chapter 13 petition.

¹⁰Applicant's wife experienced serious medical issues beginning in 1992, when she had three accidents; she had another serious accident in 1994, and again in 1997, leading to surgery in 1998 (Tr. 45-46).

Applicant's financial reprieve was short lived. In 2014, his wife tripped in the driveway, smashed her elbow, and required three surgeries to repair the damage. Applicant took time off from work to care for her. Their out-of-pocket expenses were \$40,000-50,000. In 2015, she had another accident, which required her fourth neck surgery to repair. Those out-of-pocket expenses ran \$20,000-\$30,000. She later contracted pneumonia in 2016, which devolved into bronchitis, incurring more medical bills. Applicant was diagnosed with bladder cancer in 2017, but the cancer was detected early, and his prognosis is good (Tr. 37-38). In 2018, Applicant's wife had hip replacement surgery, but hurt herself while in rehabilitation, which required a second surgery, and developed an infection which required a third surgery; the expected out-of-pocket expense is \$30,000.

Applicant documented his credit and financial counseling, and submitted a February 2018 personal financial statement (PFS) showing \$39 positive monthly cash flow (AE J). In fairness to Applicant, he overlooked additional sources of income [AE M(5)-M(8)]. His March 2018 Chapter 13 petition shows \$700 positive monthly cash flow. Applicant's work and character references [AE J, M(13)] have both known him for many years, are aware of Applicant's financial problems, and hold clearances themselves. They consider Applicant honest and trustworthy, and recommend him for his clearance, notwithstanding his financial troubles.

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.¹¹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Setting aside for a moment Applicant's first four bankruptcy petitions, Applicant had over \$4,000 in delinquent debt that he did not address until after he received the SOR, a \$95,000 delinquent education loan which he began rehabilitating before the SOR was issued, but for which he submitted no current status, and a March 2018 Chapter 13 bankruptcy petition which was still pending creditors' input and court approval.¹²

The mitigating conditions for financial considerations provide insufficient help to Applicant. The conduct was recent, frequent, and the circumstances were only unusual to the extent that he has been plagued with more than his fair share of unfortunate luck.¹³ That said, the circumstances of his financial problems were certainly largely beyond his control, and he has been responsible in addressing his debts up to a point.¹⁴

Bankruptcy, whether Chapter 13 or Chapter 7, is a legitimate means of obtaining a new start when circumstances beyond your control overwhelm your ability to pay. And the frequency of bankruptcies is not necessarily disqualifying in the absence of self-dealing or unscrupulous behavior. There is no evidence that either Applicant or his wife have so behaved. Consequently, the first four bankruptcy petitions are easily resolved in Applicant's favor, as the first three petitions were dismissed when he satisfied his creditors, and the fourth represented a not-unusual progression from Chapter 13 to Chapter 7 and a new financial start (SOR 1.a-1.d).

What remains is the Applicant's handling of his SOR debt, and his pending Chapter 13 bankruptcy petition. Applicant documented that he satisfied SOR debts !.f-1.i after he received the SOR. Applicant documented that he initiated, and substantially completed, a rehabilitation program on his \$95,000 delinquent education loan (SOR 1.e). He appears to have made the required rehabilitation payments by March 2017. But he documented no loan status after March 2017, at which point the holder of the loan would have attempted to obtain a rehabilitation loan lender in accordance with the rehabilitation agreement. His March 2018 Chapter 13 bankruptcy petition (AE I) lists two

¹¹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹²¶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;

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

¹⁴¶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;

education loan accounts with a creditor who could be a successor-in-interest to the SOR creditor, one with a \$93,632 balance, one with an unknown balance. Under the terms of his rehabilitation agreement, if this loan has been defaulted again, it cannot be rehabilitated a second time. Finally, the bankruptcy petition itself is still pending important steps. As with the other bankruptcies, the mitigating conditions only get the Applicant so far. The petition is not distant, not infrequent, and occurred under circumstances capable of repetition. On the other hand, the petition was due again to circumstances beyond his control, and filing the petition can be considered a responsible action under the circumstances. Where Applicant falls short is his inability to show progress on the petition. While he made the first contemplated payment under the as-yet-unapproved plan, that payment is insufficient to establish a favorable track record.

While Applicant has documented credit and financial counseling, it is too soon to conclude that his financial problems have been resolved or are under control.¹⁵ This failure of evidence precludes a conclusion that Applicant has made a good-faith effort to address his debts because he cannot show substantial evidence that he is adhering to his effort.¹⁶ Applicant's timely efforts to address his education loans had reached the point where he was on the cusp of regular payments, but he has no established track record of payments. The few months of \$5 payments are not sufficient, without showing what happened to the loan after March 2017. Applicant's efforts to address his debts were belated. Moreover, his two favorable work or character references are insufficient to support a whole-person assessment to overcome the security concerns raised by his current financial situation. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	For Applicant
Subparagraphs e-m:	Against Applicant

¹⁵ ¶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;

¹⁶ ¶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