



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 18-01371
)
Applicant for Security Clearance)

Appearances

For Government: Brittany M. White, Esquire, Department Counsel
For Applicant: *Pro Se*

05/30/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 31 October 2018, 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 7 March 2019 and I convened a hearing 9 April 2019. DOHA received the transcript 19 April 2019, and the record closed.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant Exhibit (AE) A. AE A was timely received post hearing.

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 Security Executive Agent Directive 4, effective on 8 June 2017.

Findings of Fact

Applicant admitted the SOR allegations. He is a 54-year-old senior configuration manager employed by a U.S. defense contractor since March 2017.³ He served in the U.S. military for four years in the late 1980's—during which time he held a clearance—and was honorably discharged. He claims to have held an industrial clearance since 2005 (GE 1).

The SOR alleges, Government exhibits substantiate, and Applicant admits four delinquent debts totaling over \$131,000. The debts comprise \$128,110 of a charged-off home equity line of credit and two charged-off credit cards (SOR 1.a-1.c)⁴ held by the same creditor, and \$2,627 of a charged-off store credit card (SOR 1.d).

Although Applicant did not report any financial problems on his January 2017 clearance application (GE 1), he volunteered his financial problems—including the SOR debts—during a February 2018 interview with a Government investigator (GE 2), based on his June 2017 credit report (GE 3). He told the investigator that he thought he had received a Form 1099-C covering SOR debt 1.a.

AE A shows that the SOR 1.a creditor issued Applicant an Internal Revenue Service (IRS) Form 1099-C (Cancellation of Debt) for the SOR amount for tax year 2016; issued Applicant a Form 1099-C for the SOR 1.b amount for tax year 2017; and issued Applicant a Form 1099-C for the SOR 1.c amount for tax year 2018. The SOR 1.d creditor did not issue Applicant a Form 1099-C. The Form 1099-Cs do not state when the forms were issued, only the tax year covered.

Applicant claims, without corroboration, that he tried to work out a payment plan with the creditor for SOR debts 1.a-1.c, but was unsuccessful because once the accounts were charged off, the creditor insisted on a full, lump sum, payment. He claims, also without corroboration, to have reported the debt cancellations as income in the noted years, as required. However, applicant did not submit copies of his income tax returns to corroborate that claim;⁵ the 2016 tax transcript Applicant submitted did not report a gross income figure, and the adjusted gross income figure the transcript reports is less than the \$100,000 amount of forgiven debt. Moreover, Applicant discovered that

³Previously, he worked for a different vendor in support of the same user agency from October 2016 to March 2017, and with yet another vendor for the same user agency from April-September 2016. He had previously been employed with yet a third vendor for the same user agency from May 2005 to July 2013, when he was laid off.

⁴The line of credit and two credit cards are Applicant's individual debts; the store credit card is a joint account with his wife (GE 3).

⁵Moreover, Applicant's September 2018 response to DOHA interrogatories (GE 2) included a July 2018 IRS tax account transcript for tax year 2016 that records an adjusted gross income that is too low to include the amount of debt forgiven. Applicant did not submit tax account transcripts for 2017 or 2018, so there is no evidence to show whether Applicant's adjusted gross income for those years reflects the amounts of forgiven debt.

the cancellation of debt applies only to his tax calculations; it does not relieve him of his legal obligation to pay. Yet, while the creditor has apparently not taken any action to recover the debts, Applicant appears to have undertaken no efforts to have the creditor formally commit to not pursue the debts further. Applicant has taken no action to address the delinquent store credit card.

Applicant attributes his financial problems to his unemployment and underemployment between about July 2013 and May 2014. While this may explain the delinquencies of SOR debts 1.a-1.c, each of which was last acted upon February-March 2014, this does not explain the delinquent store credit card, which was last acted upon in December 2011 (GE 3).

In addition to not providing any evidence of efforts to deal with the specific debts, Applicant documented no credit or financial counseling. He submitted no budget. He submitted no work or character references, or any evidence of civic or 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.⁶

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant had three charged-off debts from the same creditor reduced to Form 1099-Cs. Applicant did not corroborate his claim that he included these debts as income in the required year. He provided no evidence of efforts to resolve the debts, either before or after the forms were issued. He documented no investigation of SOR debt 1.d.⁷

The mitigating conditions for financial considerations provide insufficient help to Applicant. The conduct was recent, frequent, although the circumstances might now be considered to be unlikely to recur.⁸ The circumstances of his financial problems were certainly largely beyond his control for SOR debts 1.a-1.c, but are unexplained for SOR debt 1.d. However, he has not documented that he attempted any responsible resolution of his debts.⁹

Applicant has not documented credit and financial counseling, and submitted no budget. There is no evidence that his financial problems have been resolved or are under control.¹⁰ 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.¹¹ Moreover, he provided no work or character references, or any evidence of civic or community involvement 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

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|---------------------------|-------------------|
| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraphs a-d: | Against Applicant |

⁷¶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;

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

⁹¶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;

¹⁰¶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;

¹¹¶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