



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



In the matter of:)	
)	
)	ISCR Case No. 18-01762
Applicant for Security Clearance)	
)	

Appearances

For Government: Eric Price, Esquire, Department Counsel
 Tovah A. Minster, Esquire, Department Counsel
 For Applicant: *Pro Se*

04/18/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 29 June 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 26 February 2019 and I convened a hearing 26 March 2019. DOHA received the transcript 5 April 2019, and the record closed..

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, hearing exhibits (HE) I-II, and Applicant exhibits (AE) A-E.

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 denied the SOR financial allegations, except SOR 1.a and 1.d, which she admitted. She is a 28-year-old prospective computer technician being sponsored by a defense contractor since August 2017 (Tr. 75-77). Her employment record reveals that she has been employed in a series of low-paying jobs since June 2007, including her most recent job. She has never married, and has two children, from separate relationships, who receive no financial support from their fathers. Applicant receives food and housing support from the state. She has not previously held a clearance.

The SOR alleges, and GE 1-7 substantiate, nine delinquent debts totaling over \$25,000. Applicant admits two debts totaling over \$16,000. The debts comprise two vehicle debts, two delinquent education loans, two delinquent medical bills, two delinquent consumer accounts and one delinquent utility bill. Applicant's 2 August 2017 clearance application (GE 1) disclosed \$3,754 in education loans falling delinquent in April 2015 and being resolved in February 2017. On 26 November 2018—about a month after her Answer—Applicant filed for Chapter 7 bankruptcy protection, listing SOR debts 1.a.-1.b and 1.d-1.g (GE 7). She qualified for waiver of the filing fee (AE D). On 6 March 2019, her dischargeable debts were discharged (GE 6).

Applicant's education loans (SOR 1.e-1.f) were not discharged. She had been making small, but regular, monthly payments between June and October 2018 (AE E), but stopped the payments during the pendency of her bankruptcy (Tr. 62). She was attempting to get a deferment or forbearance on these loans, but could not because at the time, her accounts were in a bankruptcy status. She had not resubmitted her request because she felt she could make the required \$27 monthly payment due in April 2019 (Tr. 63; AE E). She has not resumed monthly payments.

SOR debt 1.c may be a duplicate of SOR 1.g, which was discharged, but the account numbers do not match. AE F shows that on 11 March 2019, Applicant paid a \$168.17 past-due balance to the SOR 1.i creditor, with a current balance of \$340.68 due by 29 March 2019.³ Applicant has not documented the status of SOR debt 1.h.

For the eleven bi-weekly pay periods between June 2018 and October 2018, Applicant averaged about \$425 per payday. Two friends of long standing and her sister—who cites her holding a clearance for fourteen years—recommend Applicant for her clearance. None of them notes any awareness of financial issues, although her sister presumably knows. Applicant completed the credit counseling by her bankruptcy petition (Tr. 74), but credits her past financial struggles for teaching her the importance of keeping her finances straight. She filed for bankruptcy protection so she could start with a clean slate.

³An account history in AE F suggests Applicant had significant delinquent bills as of November 2018, with Applicant making periodic catch-up payments, only to again fall behind with her payments. The \$168.17 payment was a delinquent bill from an earlier month. No doubt, Applicant keeps payments to this creditor more or less current so that her utility service will not be disconnected.

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.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant's current income is inadequate for her to do anything other than live paycheck to paycheck, even with food and housing assistance. She fell behind on her accounts, and was unable to resolve them without resorting to bankruptcy.⁵ While the bankruptcy discharge gives her a new start, she is unable to show any track record of staying current on her accounts post-bankruptcy.

Applicant does not fully meet the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and may not have ended; so they cannot be considered unlikely to recur.⁶ Her financial problems were due to

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶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;

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

circumstances largely beyond her control, and her bankruptcy filing seems clearly responsible under the circumstances.⁷ A similar analysis supports a conclusion that the debts have been resolved through bankruptcy,⁸ and that that resolution was made in good faith.⁹

The problem for Applicant is that her recently-discharged bankruptcy is too recent for her to demonstrate that she has been able to take advantage of the new start. Moreover, her AE F suggests that even with the new start, she will have a problem keeping current on her routine expenses. The conundrum for Applicant is that she probably cannot improve her finances without this better job, which she cannot get without this clearance. And she cannot get this clearance without a proven track record, which she cannot get without the passage of time.

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.¹⁰ Applicant's efforts to date might have constituted such a plan, but for her inability to demonstrate that she has benefitted from the new start. Moreover, the "whole person" evidence submitted by Applicant is insufficient to support a "whole-person" analysis arguing for granting her clearance notwithstanding her financial issues. I conclude Guideline F against Applicant.

Formal Findings

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

⁷¶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;

⁸¶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;

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

¹⁰ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

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