



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX.) ISCR Case No. 18-01978
)
Applicant for Security Clearance)

Appearances

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

04/02/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 24 August 2018, 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 8 February 2019, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 8 March 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-7.

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) of Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017.

Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.l. He is a 43-year-old project manager employed by a U.S. defense contractor since February 2015. He served honorably in the U.S. military from March 1995 to March 2015, when he retired. He was recently divorced from his second wife (June 2018). They had two children together before separating in April 2016. He seeks to retain the clearance which was most recently renewed in February 2006 (GE 2).

The SOR alleges, Government exhibits (Items 2-7) substantiate, and Applicant admits 11 delinquent debts totaling over \$66,000 (SOR 1.b-1.k and 1.m). Applicant denies SOR 1.l, which is established by Item 6. Applicant also admits having his house foreclosed upon in November 2016 (SOR 1.a), filing for Chapter 13 bankruptcy protection in October 2015 (SOR 1.n), and having a state tax lien in March 2015 (SOR 1.o).³

Applicant reported filing for Chapter 13 bankruptcy protection on his November 2015 clearance application (Item 2). The October 2015 filing, listed \$106,000 in delinquent debt, and encompassed most of the SOR debts. Applicant discussed the SOR debts during his October 2016 interview with a Government investigator (Item 3), based on his November 2015 credit report (Item 4). The Chapter 13 petition had been dismissed for non-payment in April 2016, when he and his wife separated.

Applicant's December 2018 Answer (Item 1) enclosed copies of the final divorce decree and supporting documents, and some records from a consumer credit counseling organization. It also contained a September 2018 letter from Applicant's bankruptcy lawyer to Applicant's ex-wife's divorce lawyer, proposing that Applicant and his ex-wife jointly file separate bankruptcy petitions to resolve their marital debt. The divorce decree specifies that Applicant is responsible for most of the marital debt, and his credit reports (Items 4-6) indicate that most of the debts are his individual accounts. The record contains no indication whether or what response was received to Applicant's offer, which included Applicant paying for his ex-wife's bankruptcy-filing expenses.

Applicant attributed their financial problems to his then-wife losing her teaching job in 2011, and remaining unemployed until August 2015. They used their credit cards to pay their ongoing living expenses. Yet, there is no evidence of any efforts undertaken by her to regain employment or cut their living expenses during that time. When she became re-employed, they tried Chapter 13 bankruptcy but that effort was overtaken, and their finances further complicated, by their April 2016 separation.

Applicant presumably received the credit counseling required as a precondition for filing his bankruptcy petition in 2015. However, he provided no current budget or

³The tax lien was due to Applicant's then-wife settling some delinquent debts for less than the balance owed, thereby generating reportable income which they did not include on their 2014 state income tax return. Applicant paid the lien as soon as he became aware of it.

financial statement to show that he is otherwise meeting his current living expenses. Moreover, the fate of his contemplated bankruptcy filing remains unknown. A Chapter 7 discharge would give him a fresh start. A Chapter 13 plan would require a demonstration of sufficient income to manage the plan payments. Finally, he provided no work or character references, or any 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(d). 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 has a history of financial difficulties which date back to at least 2011. The financial problems were due to Applicant's wife losing her job in 2011 and were compounded by their separation in 2016. Nevertheless, Applicant has not explained his relative inaction on his finances since his October 2016 interview with the Government investigator.⁵

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;

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple, although his financial situation may be considered unlikely to recur.⁶ Applicant’s financial problems were due to circumstances beyond his control; but it is debatable whether he dealt responsibly with his delinquent debts.⁷ Applicant documented no efforts between 2011, when his wife lost her job, to October 2015 when he first attempted bankruptcy, for his wife to find new employment, or for them to try to reduce their living expenses. Moreover, bankruptcy can be a legitimate and responsible means of addressing debt, but Applicant’s case would be much stronger if his plans for a future bankruptcy had progressed beyond the discussion stage with his ex-wife.

Applicant presumably received credit counseling as part of his unsuccessful 2015 bankruptcy petition, and is likely to receive it again if he files or has filed for bankruptcy protection after his final decree, as contemplated. Yet now, his delinquent debts remain in limbo. Thus, it is too soon to conclude that this debt was being resolved or under control.⁸ Similarly, it is too soon to establish that he has made a good-faith effort to address this debt.⁹ Moreover, he provided no “whole person” evidence upon which I might base a favorable result. Accordingly, I resolve Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-n:	Against Applicant
Subparagraph o:	For Applicant

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

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 individual 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 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