



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 18-02124
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro Se*

03/14/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 22 October 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.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 6 February 2019, when Department Counsel stated no objection to Applicant’s response to the FORM. DOHA assigned the case to me 1 March 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-5, and Applicant’s Response to the FORM (Response).

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, but denied the falsification allegation. He is a 53-year-old information technology support specialist employed by a defense contractor since February 2017. He was previously employed in a similar position, at a much higher salary from December 2006 to June 2015, when the company shut down, and he remained unemployed until February 2017. He received a \$23,000 lump-sum pension payment from the company. He has not previously held a clearance.

The SOR alleges, Items 3-5 establish, and Applicant admits 43 delinquent debts totaling over \$31,000. The debts comprise 25 delinquent medical bills totaling over \$17,000, 5 delinquent education loans totaling over \$3,000, and 13 delinquent consumer credit accounts totaling nearly \$11,000. Applicant's Response shows that the state educational loan authority obtained a \$5,291.89 garnishment order against Applicant's wages in December 2017, which Applicant's employer began deducting at the end of January 2018.³

Applicant disclosed no financial problems on his October 2017 clearance application (Item 2), but discussed most of the SOR debts during a May 2018 interview with a Government investigator (Item 3). Applicant acknowledged that the debts were his. He stated that he knew he had extensive problems when he completed the clearance application, but claimed that he had no intent to mislead the Government because he knew the issue would come up during the investigation. However, he also stated that he omitted his financial problems from the clearance application because he feared that reporting the debts would jeopardize his getting and keeping the job. Now that he has stable employment, he hopes to have his finances straightened out within the next two years.

Applicant has been paying some of his medical bills as finances permit. He offered a screen shot of some claimed payments (Response), but nothing in the screen shot connects the putative payments to any SOR debts. Applicant expects to finish the garnishment payments on his education loan within the next two-to-three months. However, he does not appear to have been in contact with any of his creditors aside from the education loan authorities.

Applicant traces his financial problems to his 20-months' unemployment, his re-employment at a substantially reduced salary, and his continued medical expenses (not otherwise explained). However, he has not undertaken any action to contact his creditors to discuss addressing his debts. The only creditor he has documented regular payments for obtained a garnishment order to enforce payment. Moreover, most of the

³At which point the balance owed had grown to \$5,298.36. Applicant provided copies of the January, February, March, and July 2018, and January 2019 creditor statements. The January 2019 statement reflected regular payments and a current \$896.08 balance. Applicant also provided records from the collection agent for the Government loans. However, the relationship between the two sets of documents is not established.

alleged medical debts are held by two collection agents, and could presumably be consolidated into a repayment plan.

Applicant has not documented any credit or financial counseling. He provided no current budget. He provided no work or character references, and provided no evidence of community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding 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, but Applicant did not mitigate the security concerns. Applicant accumulated significant debt while he was unemployed, but has undertaken no independent efforts to address those debts after regaining employment in 2017.⁵

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

⁵19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; © a history of not meeting financial obligations;

The mitigating factors for financial considerations provide little help to Applicant. These financial difficulties are recent and frequent, and given his decrease in income cannot be considered unlikely to recur.⁶ Applicant's unemployment, underemployment, and ongoing medical issues are clearly circumstances beyond his control. However, he has not been responsible in dealing with these debts since becoming re-employed.⁷ It is not that he has not completely resolved his debts. It is that he has not documented any efforts to organize his debts or keep his creditors advised of his current situation.

It may be that Applicant lacks the means currently to do more than he is presently doing. That is impossible to know because Applicant did not provide a financial statement or budget that would show if he had the means to begin to address his debts. The debts are clearly not being resolved.⁸ Moreover, Applicant has undertaken no actions on the bulk of his debt that could be construed as a good-faith effort to resolve the debts, and repayment by garnishment does not constitute such an effort.⁹

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 actions do not constitute such a plan. I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant failed to mitigate the security concerns. Applicant was aware of his significant debt, but deliberately chose to omit that fact from his clearance application.¹¹ He says he knew the Government would find out about his debts, and so lacked the intent to mislead the Government. However, he omitted his debts because he feared he would lose, or not get, the job he was being considered for. This hardly improves his position. As a cleared employee, there is a wide variety of adverse information that an applicant is required to report to the employer, so the employer can comply with its obligation to

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) 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).

¹¹¶ 16 (a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

report the information to the Government, if required. The Government must have confidence that an applicant will self-report so the security significance of the conduct can be assessed, and corrective action taken. Applicant's conduct here constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants. Accordingly, I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-qq:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph a:	Against Applicant

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