



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 18-02255
)
Applicant for Security Clearance)

Appearances

For Government: Rashiid S. Williams, Esquire, Department Counsel
For Applicant: *Pro Se*

04/29/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 4 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 26 February 2019 and I convened a hearing 18 March 2019. DOHA received the transcript 26 March 2019.

¹Consisting of the transcript (Tr. I), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits (AE) A-C. AE A-C were timely received post hearing. The record closed 16 April 2019, when Department Counsel stated no objection to AE A-C.

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 financial allegations, except SOR 1.g, 1.j-1.k, and 1.m-1.n, which she disputed. She is a 52-year-old technical program manager employed by a defense contractor since March 2015. She was unemployed from October 2014 to March 2015, and from October 2009 to November 2011 (GE 1). She claims to have previously held a clearance, but was unable to provide any dates.

The SOR alleges, and GE 1-4 substantiate, 14 delinquent debts totaling over \$97,000. Applicant admits nine debts totaling over \$94,000. She also admits filing for Chapter 7 bankruptcy protection in January 2011, with a discharge of her eligible debts in May 2011. She disclosed the bankruptcy petition on her September 2016 clearance application (GE 1). The debts comprise a \$23,000 Internal Revenue Service (IRS) tax lien (SOR 1.a), two delinquent education loans totaling over \$60,000 (SOR 1.b-1.c)), two delinquent vehicle loans (SOR 1.e-1.f), and nine delinquent consumer accounts (SOR 1.g-1.o). Applicant's post-hearing exhibits show that on 4 April 2019, she entered a debt management program not otherwise detailed (AE A). On 5 April 2019, she authorized full payment on SOR debt 1.o (AE B). She did not otherwise document any of the claimed payment arrangements or payments asserted during her hearing.

Applicant attributed her 2011 bankruptcy to her ongoing unemployment. Her 2014-2015 unemployment led to additional financial problems, as did some periods of underemployment after 2015. She claimed to be making regular payments to the IRS, but did not document any payment arrangement or payments. She claimed to have paid SOR debt 1.k, but again, did not document the payment. She had not taken any action to address the remainder of her debts. Applicant works a full-time job and a part-time job, and her husband works full time as well. Their combined monthly take-home pay is about \$13,000. They have \$400-500 positive monthly cash flow (Tr. 47-51).

Applicant received the financial counseling required by her 2011 bankruptcy, but has not otherwise received credit or financial counseling (Tr. 54). The pastor of her current church, a former supervisor, and a former user-agency representative gave Applicant favorable references. However, none of them noted any awareness of her financial issues (AE A). Her work performance was recently praised by her superiors and the user agency (AE C).

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.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant's 2009-2011 unemployment led her to file for bankruptcy protection, and the ensuing discharge gave her a new start. Nevertheless, she continued to experience financial problems, which were only partially caused by her 2014-2015 unemployment. Moreover, she appears to have undertaken little action to address her delinquent debts, and has not documented what little action she has claimed.⁴

Applicant only partially meets the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and have not ended; so they cannot be considered unlikely to recur.⁵ Her initial financial problems were due to circumstances beyond her control, and her later financial problems were at least partly due to a short period of unemployment. However, she cannot be said to have dealt responsibly with her delinquent debts. She has few claimed, and no documented, actions to address her delinquent debts. The recent payment of SOR debt 1.0 and entry into a debt management program—not otherwise detailed—were undertaken only after her hearing.⁶

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶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;

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

⁶¶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;

She provided no evidence of credit or financial counseling, or a budget to address her current debt plans, so I cannot conclude that the SOR debts have been, or are being, resolved.⁷ Moreover, no track record of payments means she cannot demonstrate a good-faith effort to satisfy the debts.⁸

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.⁹ Applicant has demonstrated neither plan nor action. Moreover, her “whole person” evidence is inadequate 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-o:	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

⁷¶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;

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

⁹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).