



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 18-02419
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

04/17/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 30 October 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Adjudicative Guideline (AG) 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 closed 23 March 2019, when Applicant's response to the FORM was due. Applicant sent no additional documents. DOHA assigned the case to me 4 April 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-8.

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 allegations, except for SOR 1.i, a debt which she planned to settle. She is a 46-year-old senior configuration analyst technician employed by a U.S. defense contractor since January 2017. She has held similar jobs since December 2004, except for being unemployed from October to November 2009, November 2013 to June 2014, and from July to August 2015. She had favorable background investigations in February 2002 and May 2010 (Item 4).

The SOR alleges, and Government exhibits (Items 4-8) establish, 10 delinquent debts totaling nearly \$25,000 (SOR 1.c-1.l). Those same exhibits show that Applicant failed to timely file her 2015-2017 state and Federal income tax returns (SOR 1.a-1.b). Applicant's August 2018 credit report (Item 8) and a creditor receipt she sent with her Answer show that SOR debt 1.h was paid in May 2017. She also sent a receipt showing that SOR debt 1.k was paid in late December 2018 (Answer), after he received the SOR.

The debts comprise two voluntary automobile repossessions totaling over \$18,000 (SOR 1.c and 1.g), four delinquent utility accounts totaling \$1,200 (SOR 1.e, 1.h, and 1.k-1.l), \$2,906 delinquent rent (SOR 1.l) and three delinquent consumer credit accounts totaling over \$1,900 (SOR 1.d, 1.f and 1.g). Applicant disclosed her failure to file her state and Federal income tax returns, and listed SOR debts 1.d-1.f, 1.h, and 1.k, on her January 2017 clearance application (Item 4).³ She discussed her taxes and these debts, but was confronted with the other SOR debts, during an interview with a Government investigator on 13 April 2018, based on her April 2017 credit report (Item 7).⁴ She stated her intent to address the listed debts.

However, except as stated above, Applicant documented no efforts to address her debts, either after her interview or after she received the SOR. She did not attribute her financial problems to any particular circumstance, and she provided scant explanation of her unemployment periods—the last of which ended in September 2016. She provided no budget or financial statement. She has not documented any financial or credit counseling. She provided no work or character references, or any evidence of community involvement.

Policies

The AG list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions

³She stated that filing her income tax returns had not been a priority for her, but that she was in the process of getting her returns filed. She also stated that she had made and finalized payment arrangements for the listed debts.

⁴She had still not filed her delinquent tax returns, but stated she would do so within the next six months. However, the tax returns were still pending at the time of her October 2018 response to DoD interrogatories (Item 6). She claimed that she filed her 2015 tax returns in late December 2018, but the proffered certified mail receipts prove only that she mailed something to the state and Federal tax authorities—not what was sent.

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 AG 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.⁵

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties for which she did not provide any documentation of efforts to resolve her debts, or file her delinquent tax returns.⁶

Applicant meets none of the mitigating conditions for financial considerations. She has not clearly documented any efforts to resolve them.⁷ Applicant did not document that her financial problems were due to circumstances beyond her control, and she documented no efforts to resolve them, either after her subject interview or after she received the SOR or FORM.⁸ Applicant has had no credit or financial counseling, and

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶19(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; (f) failure to file or fraudulently filing annual Federal, state or local income tax returns . . . ;

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

⁸¶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;

there is no evidence any of the debts are being resolved.⁹ Her lack of effort does not constitute a good-faith effort to address her debts.¹⁰ In addition, Applicant has not demonstrated a track record of living within her means. Furthermore, Applicant provided no “whole-person” evidence to mitigate the security concerns raised by her inaction on the debts. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-j, i-l:	Against Applicant
Subparagraph h:	For 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

⁹¶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;

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