



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 18-02878
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

05/07/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 24 January 2019, 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 16 April 2019, when Department Counsel stated no objection to Applicant's Response. DOHA assigned the case to me 29 April 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-4, 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 Security Executive Agent Directive 4, effective 8 June 2017.

Findings of Fact

Applicant admitted the SOR financial allegation. He is a 37-year-old canine handler employed by a U.S. defense contractor since July 2016 (Item 4). He served honorably in the U.S. military from March 2001 to July 2014, when he was discharged in paygrade E-6. He seeks to retain the clearance which was most recently renewed in July 2014 (Item 3).

Applicant married his first wife in May 2003. Their first child was born in September 2003; their second child was born in June 2005. They divorced in May 2011. He remarried in November 2011. He and his second wife have two children, born in November 2012 and March 2015. Applicant's second wife also remarried, although the date of that marriage does not appear in the record.

As part of Applicant's May 2011 divorce, the court issued an Income Deduction Order that required Applicant's present or subsequent employers to withhold \$1,281.38 monthly from Applicant's pay until Applicant's oldest child reached age 18 in 2021, and a lesser amount until his second child reached age 18 (Answer). The military withheld the required child support until Applicant's July 2014 discharge.

Sometime before April 2012, Applicant's ex-wife and her new husband proposed to Applicant—for a variety of reasons not relevant to this decision—that the new husband adopt Applicant's two children with his first wife. One expected consequence of the adoption would be to end Applicant's child support obligation. Applicant agreed to the adoptions, signed the adoption papers (but did not keep copies of them), and as of January 2013, had not received copies of the final adoption orders. The military withholding of the child support ended with Applicant's July 2014 discharge. After his discharge, Applicant had difficulty finding new employment, and experienced periods of unemployment. However, when he did have employment, he did not provide the child support order to the new employer, erroneously thinking that the adoptions had been completed (Item 4).

Applicant asserts that he was unaware of his child support arrears until he was confronted with them by a Government investigator during an August 2018 interview (Item 4). Nevertheless, he told the investigator that he would act to address the arrears. However, while Applicant's 5 March 2019 Answer claims that he immediately worked out a new budget, began making payments on the arrears, and had made all the required monthly payments to date, his Response shows that he made payments on 21 February, 1 March, 19 March, 29 March, 12 April, and had submitted the payment for 26 April 2019 (Item 4).³ Applicant did not submit any court records to show the status of his child support account.

³The three banking documents appear to be from two different banking institutions, only one of which is clearly connected to the child support order case number. The submitted records document six-seven payments of \$650.

The SOR alleges, Government exhibits (Items 1-4) substantiate, and Applicant admits \$61,565.06 in child support arrears. After he received the SOR, he made \$3,900-4,500 in payments to the creditor. However, he documented no financial or credit counseling, presented no budget, and 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 stopped making his child support payments when he was discharged from the military in July 2014. His purported belief that he was no longer responsible for child support because his ex-wife's new husband had adopted the children is unreasonable, as Applicant failed to exercise due diligence to ensure that the adoptions had been completed. Moreover, even if I concluded that he reasonably believed that he no longer had a child support obligation

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

and first became aware of the arrears during a subject interview in August 2018, he took no action to address the arrears until after he received the SOR.⁵

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 not due to circumstances beyond his control, but were due to Applicant deliberately ignoring his financial obligation and not ensuring that the adoption orders had been issued, and his child support obligation ended. Moreover, Applicant did not deal responsibly with his delinquent debt when he allegedly first became aware of it.⁷ Applicant documented no efforts to contact the creditor until after he received the SOR, even though he became aware of the arrears in August 2018.

Applicant documented no financial or credit counseling, and his few payments made after receiving the SOR are insufficient to demonstrate that the debt was being resolved or under control.⁸ Similarly, the payments do not 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
Subparagraph a:	Against Applicant

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 . . .

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