



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 19-01269
)
Applicant for Security Clearance)

Appearances

For Government: Brittany M. White, Esquire, Department Counsel
For Applicant: *Pro Se*

08/04/2020

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case [transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibit (HE) I, and Applicant Exhibits (AE) A-C], I deny Applicant's clearance. The record closed 26 November 2019, when Department Counsel stated no objection to AE C.

On 19 July 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.¹ Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 1 October 2019 and I convened a hearing 30 October 2019. DOHA received the transcript 13 November 2019.

¹DoD 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 allegations. He is a 47-year-old desk side support technician employed by a defense contractor since March 2019. He has been employed in similar positions since February 2001. He seeks to retain the clearance he was first issued in June 1997. He claims that his job does not require access to classified information.

The SOR alleges, Government exhibits 1-6 substantiate, and Applicant admits five delinquent debts totaling over \$160,000. The debts comprise nearly \$67,000 in three consumer debts owed to the same creditor, and over \$94,000 in delinquent state and Federal income taxes. His Federal tax liability covers tax years 2011-2018; his state tax liability covers tax years 2012, 2014-2015, and 2017-2018. He has been married for 18 years and has no children.

Applicant reported the delinquent Federal income taxes on his June 2018 clearance application (GE 1). He discussed the SOR debts during interviews with a Government investigator in September 2017 and in September and October 2018. Applicant acknowledged the delinquent debts. He claimed to be making monthly payments on his state and Federal taxes, but had not made any payment arrangements on the consumer debts (GE 2). In his May 2019 response to DOHA interrogatories (GE 2), he stated he had a repayment plan for his state taxes but not for his Federal taxes. His tax transcripts for tax years 2011-2018 show no Federal tax payments aside from the seizure of his income tax refunds (GE 3). AE A reflects a series of payments to the state tax authority between August 2016 and October 2019, but does not indicate the status of the account. AE B reflects that as of October 2019, Applicant had hired a financial services company to address derogatory/frivolous items on his credit report, but that SOR debts 1.a-1.c had yet to be addressed. AE C reflects that Applicant last made a payment on his state taxes in November 2019, reducing his outstanding balance for tax years 2015 and 2017 to about \$5,900.

Applicant attributed his tax issues to his wife not having adequate income tax withholding taken from her earnings. They file joint taxes, but otherwise manage their finances separately. However, he documented no efforts to address that issue for the eight years at issue for his Federal taxes and the five years at issue for his state taxes. He attributed his consumer debt problems to his wife not helping him with the commercial credit obligations he undertook. His new job pays \$76,000 annually; his previous salary was \$68,000 (Tr. 25).

In addition to not providing any evidence of efforts to deal with the specific SOR debts except for his state taxes, Applicant has not received any credit or financial counseling. The financial services company he hired has been dealing with credit report entries not alleged in the SOR. He does not have a budget. 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(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.²

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant had five delinquent debts totaling over \$160,000 that he has not acted upon since at least 2017, except for the state tax liability at SOR 1.e.³

The mitigating conditions for financial considerations provide insufficient help to Applicant. The conduct was recent, frequent, and the circumstances are likely to recur.⁴ The circumstances of his financial problems were certainly within his control, he has not documented that his overall approach to resolving his debts has been responsible,

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶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;

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

showing only payments on his state tax liability, and no communications regarding his Federal tax liability or his consumer debt.⁵

Applicant has not had credit and financial counseling, and has no budget. There is no evidence that his financial problems have been resolved or are under control.⁶ This failure of evidence precludes a conclusion that Applicant has made a good-faith effort to address his debts because he cannot show substantial evidence that he is adhering to his effort.⁷ Moreover, he provided no character evidence to support a whole-person assessment to overcome the security concerns raised by his current financial situation. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Subparagraph e:	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

⁵¶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;

⁶¶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;

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