



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



In the matter of:)	
)	
XXXXXX, Xxxxxxx Xxxxxxxxx, Xx)	ISCR Case No. 12-06001
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Donna P. Price*, Esquire

09/02/2014

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 23 July 2013, 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 28 January 2014 and I convened a hearing 18 March 2014. DOHA received the transcript 26 March 2014.

*Appearance originally entered as David P. Price, Esquire.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-O. AE J-O were timely received post hearing. The record in this case closed 4 April 2014, the day Department Counsel indicated no objection to Applicant's post-hearing exhibits.

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) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR financial allegation. He is a 45-year-old, on-call consultant sponsored for a clearance by a defense contractor since May 2013. He seeks to regain the clearance he previously held in 2007.

This case originally began as an SOR in ISCR Case No. 07-01797, issued in October 2007. When Applicant failed to respond in a timely fashion, his clearance was revoked in January 2008. In February 2008, Applicant's company tried to get the case reopened because of procedural problems that were the company's fault. DOHA denied that request in March 2008. In February 2009, Applicant reapplied for his clearance, but DOHA denied the request. In June 2011, Applicant reapplied again and this time DOHA granted the re-application. Implicit in the grant, is DOHA's conclusion that the issues raised in the earlier SOR have been mitigated.

After Applicant's clearance was revoked in 2008, he remained employed by his sponsoring company, albeit in positions not requiring a clearance. He remained continuously employed with that company until May 2013. He now works as an unpaid, on-call consultant for the company (Tr. 45), which continues to sponsor his clearance (Tr. 34-35, 46). Applicant has outstanding job offers if he is able to regain his clearance (AE E, F).

The current SOR originated with a new background investigation, initiated with a clearance application in May 2012 (GE 1). The background investigation was further enhanced by Applicant's response to DOHA interrogatories in July 2013 (GE 3).

The SOR alleges, Government exhibits (GE 2-3) substantiate, and Applicant admits, a single mortgage account, \$131,206 past due on a balance of \$387,636. At the time the SOR was issued, the house was valued at \$257,000 (Tr. 39). Applicant had tried to sell the house previously, without success, and surrendered possession of the house to have the mortgage addressed in bankruptcy (GE 3; Tr. 39-40).

Applicant and his wife petitioned for Chapter 7 bankruptcy in November 2013 (GE 4), and received a discharge of their dischargeable debts in February 2014 (AE A). Applicant's lender acknowledges that Applicant has no further obligation on the mortgage (AE J). Among the debts which were not discharged were tax debts to the Internal Revenue Service (IRS) and his state comptroller. The state tax debt of \$241 was expected to be deducted from Applicant's 2013 state income tax refund (Tr. 43-44; GE H, I). Applicant has entered a repayment plan with the IRS (AE O), based on amended tax returns (AE G, M-N; Tr. 48-50).

Applicant's most recent bout of financial trouble began in 2011, when his company lost the contract he was working on because the base where Applicant performed on the contract was closed as a result of the base realignment and closure (BRAC) process. Although Applicant remained employed, he did so at a lower salary, and was required to move to a new work location. His wife also experienced some

periods of unemployment. Finally, Applicant had major surgery in 2012. State compensation, at a reduced portion of his salary, lasted only two weeks. He had no income during the remainder of his three-month convalescence.

If Applicant regains his clearance, he has several prospective jobs, each of which would pay at least \$85,000 per year, more if the contract requires deployment overseas (Tr. 52-55). Applicant's wife currently earns about \$2,150 per year (Tr. 54). Applicant and his wife completed an extensive financial management course (AE K, L). They currently have no trouble meeting their household expenses. Applicant's work and character references (AE D) consider him honest and trustworthy and recommend him for his clearance.

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, but Applicant mitigated the security concerns. The immediate precipitant of his financial problems was not losing his clearance in 2007, but was his forced job relocation—at a lower salary—necessitated by the BRAC program closure of the military installation

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

where he was employed at the time. He was upside down on his mortgage and unable to sell the house or get mortgage relief.⁴

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties were recent, they consisted mostly of a single mortgage debt. Applicant has the prospect of stable employment; so the circumstances that caused them are less likely to recur.⁵ Further, his financial problems were largely due to circumstances beyond his control, and he resorted to bankruptcy only when it became clear that he was unable to sell his house or obtain other mortgage relief.⁶ Applicant and his wife have undergone extensive financial counseling, apparently more than is required to qualify for bankruptcy. Under the circumstances, this constitutes a reasonable effort to get his finances under control.⁷ The only debt not completely resolved is his debt to the IRS, for which he has entered a repayment plan. Having addressed his other financial obligations, I am confident this final obligation will also be addressed. Overall, substantial progress has been made addressing his delinquent debt.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's efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraph a:	For Applicant

⁴¶ 19 (a) inability or unwillingness to satisfy debts; (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;

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).

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge