



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXXXXX XXXXXXXX, XXX))	ISCR Case No. 12-07713
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

12/31/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 12 May 2014, 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 4 March 2015, and I convened a hearing 8 April 2015. DOHA received the transcript 16 April 2015.

¹Consisting of the transcript (Tr.) and Government exhibits (GE) 1-6.

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 denied the SOR financial allegation. He is a 61-year-old security specialist employed by a U.S. defense contractor since March 2012. He was previously employed in a similar position with another contractor from December 2010 to March 2012. He was unemployed from September-December 2010 and from February-September 2004. He seeks to retain the clearance he has held, as needed, since about 1988. He has been a security specialist all his career, both in the military and for defense contractors.

Applicant entered the U.S. military in June 1987, enlisting in a state active reserve unit. He served honorably until February 2004, when he was medically discharged because of injuries he sustained while on deployment in support of military operations begun in the wake of the September 2001 terrorist attacks. He was three years from achieving regular retirement, but he began receiving irregular retired pay in December 2014 (Tr. 53). He began receiving \$376 monthly disability payments in 2005; he currently receives \$472 monthly (Tr. 50). His three adult children from his second marriage and a grandchild live with him and his wife.

Applicant first married in June 1974. He and his first wife separated in September 1983, but he remained married to her because she became ill and he wanted her to retain the benefits he was able to provide her. When he divorced her in April 1991, he was already in a relationship with his second wife, whom he married in August 1991. They have been married over 24 years.

When Applicant was medically discharged from the military in February 2004, he lost his non-taxable allowances and his access to free medical care, as well as his military pay. After nine months unemployment, the job he obtained paid only \$30,000 annually, a significant pay cut from his military service. In the six years he was employed by this Government contractor, he received periodic pay raises: to \$55,000, \$60,000, and then \$70,000. When the contract ended in September 2010, he was making \$70-75,000 annually. However, during his unemployment and the period of lower pay in his early years with the company, Applicant estimates he spent about \$60,000 in savings to augment his reduced salary.

Although Applicant was only unemployed from September to December 2010, the job he obtained paid only \$60,000 annually, another significant pay cut. He moved to his current employer in March 2012, at a starting salary of \$85,000. He currently earns \$92,000 annually. His wife makes about \$35,000 annually working for the state Government. Applicant also now receives about \$15,000 annual retired pay.

The SOR alleges, and Government exhibits substantiate, that Applicant filed for Chapter 13 bankruptcy protection in June 2013, listing \$482,000 in liabilities, of which almost \$166,000 was unsecured. The reorganization plan was ultimately confirmed in February 2014, obligating Applicant to pay almost \$135,000 over five years (Answer;

GE 2-4). Applicant denied the SOR allegation because he incorrectly believed that he did not have \$482,000 in liabilities, and was obligated to pay \$210,000.³

Later in June 2013, Applicant filed a motion to make payments before his plan was confirmed. On 27 June 2013, the court approved a wage order of \$1,600 monthly (GE 3). Unfortunately for Applicant, his initial plan was denied, with leave to amend, on 14 August 2013, 10 October 2013, and 11 December 2013. Applicant filed four amended plans before he ultimately received confirmation on 20 February 2014. Concomitant with the confirmation, the court issued a wage order for \$2,295 monthly.⁴ On 17 June 2014, the court issued another wage order for \$2,395 monthly (Answer, Enclosure C).⁵ Applicant must make this monthly payment until approximately June 2018.⁶

Applicant attributes his financial problems largely to his service-related injury, which resulted in his medical discharge from the military, nine months' unemployment, and ongoing expenses no longer covered by the military. His financial problems were exacerbated when he became unemployed, and when each new job after being unemployed came with a significant pay cut.

Applicant received financial counseling as part of his bankruptcy process. He has made all his required bankruptcy payments—another approximately \$21,000 from July 2014 through March 2015. Two work references from a previous contractor employment (one from the company; one from the Government agency) consider him honest and trustworthy and recommend him for his clearance (Answer). There is no record of any security violations during any time he held a clearance. Moreover, the Government

³Applicant's bankruptcy petition (GE 4) clearly shows the \$482,000 total liabilities. The bankruptcy court ordered Applicant to pay the trustee "the lump sum total of \$10,769.21 for a period of 8 (sic) months . . . \$2,295 for 4 (sic) months and then \$2,395 for 48 months for a total of 60 months." (Answer) Applicant's assertion miscalculates the amount to be collected, based in part on the poor wording of the order. If Applicant paid \$10,769.20 per month for each of eight months, he would indeed pay over \$210,000 to the trustee over 60 months. However, as is clear from Applicant's payment records with the trustee (Answer, Enclosure B), Applicant was to pay an aggregate \$10,769.20 (lump sum) by the end of February 2014 (eighth month), followed by the stated monthly payments over the next 58 months.

⁴Although not reflected in the bankruptcy records, the court must have understood that while Applicant had sought and received a wage order for \$1,600 monthly before confirmation of the plan, he was paying weekly to the trustee. The court must also have understood that Applicant had paid the trustee over \$12,000 by the time the plan was confirmed. Consequently, the 20 February 2014 confirmation and pay orders reflect a lump-sum payment followed by 52 monthly payments.

⁵Applicant's payment records for the trustee reflect a new weekly payment of \$552.69. That amount is the required weekly amount necessary to make 12 monthly payments of \$2,395. Similarly, although Applicant made two larger payments in July 2013 to cover the initial court-ordered \$1,600 monthly payment, the subsequent weekly payments show the required payment of \$369.23 to pay \$1,600 monthly, and the required payment of \$529.62 to pay \$2,295 monthly.

⁶Applicant's total payments of \$21,321.19 between late July 2013 and early July 2014 are greater than the \$19,949.20 due to have been paid by this time under the court's confirmation order.

produced no credit reports or other evidence to suggest that Applicant has had any ongoing financial problems since undertaking his bankruptcy.⁷

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.⁸

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant's medical discharge in February 2004, unemployment from February-September 2004, underemployment for a period after September 2004, and unemployment from September-December 2010 created financial problems for him.⁹

⁷He obtained permission from the court to buy a new car, with a monthly payment that was within the amount approved by the court (Tr. 48-49). However, he was ultimately unable to keep up the payments and surrendered the vehicle to the lender. He bought a used car at auction and is in the process of getting it into working order.

⁸See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, his employment is much more stable. His income has been recently augmented by his retirement pay, suggesting that the circumstances that caused his financial problems are less likely to recur.¹⁰ Further, his financial problems were largely due to circumstances beyond his control, and he acted responsibly trying to keep his finances in order before deciding, with advice of counsel, that a Chapter 13 financial reorganization was the most sensible way to resolve his debt.¹¹

Applicant received financial counseling as part of his bankruptcy petition in June 2013, and he acted to begin plan payments before the plan was confirmed.¹² Indeed, he satisfied the plan requirement for a lump-sum payment by the time the plan was confirmed. Moreover, he met the next plan goal by the time he answered the SOR. His continued plan payments since constitute a good-faith effort to resolve his debts. As of the date of the hearing, he had paid about \$42,000 of his required payments.¹³ 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.¹⁴ Applicant's efforts to date constitute such a plan, and his consistent payments on his bankruptcy plan—before the SOR was issued—reflect significant actions. Finally, Applicant's record of military service, his record of appropriate handling of classified information in the past, and the favorable work and character references he provided establish a strong "whole person" analysis in favor of granting Applicant's clearance. I conclude Guideline F for Applicant.

Formal Findings

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

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

¹¹ ¶ 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;

¹² ¶ 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;

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

¹⁴ISCR 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