



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



In the matter of:)	
)	
XXXXXXXX, Xxxxx)	ISCR Case No. 12-08831
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 24 November 2014, 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 24 May 2015, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 17 June 2015.

¹Consisting of the File of Relevant Material (FORM), Items 1-5.

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 allegations, except for SOR 1.a. He is a 32-year-old employee of a U.S. defense contractor since August 2010. He claimed that he was not working between August 2001 and August 2010. He has not previously held a clearance.

The SOR alleges, and Government exhibits (Items 2-5) substantiate, four Federal income tax liens filed by the Internal Revenue Service (IRS) totaling nearly \$25,000, and seven delinquent medical bills totaling nearly \$2,900. Government exhibits also establish that Applicant failed to file his 2003 Federal income tax return, and failed to timely file his Federal income tax returns for 2004, 2005, and 2006. Applicant denied that he had not filed his 2003 tax return, but provided no proof that the return had been filed (after stating in his clearance application that he had not filed his 2003 tax return). On 29 October 2014, the Government released the tax lien alleged in SOR 1.c, for tax years 2004, 2005, 2006 (Answer).

Applicant's December 2011 clearance application (Item 2) reported that he had failed to file his 2003, 2004, and 2005 income tax returns. He estimated his tax liability for each year at \$3,000. During a 4 September 2012 subject interview with a Government investigator (Item 3), Applicant acknowledged that the four tax liens (SOR 1.c-1.f) were for his delinquent taxes for tax years 2003-2005. He was also confronted with SOR debts 1.g and 1.k-1.m, which he stated he was unaware of.

In his 4 September 2014 response to DoD interrogatories (Item 3), Applicant claimed that he had paid the tax liens at SOR 1.e and 1.f, and was making payment arrangements for the tax liens at SOR 1.c. and 1.d. He provided tax transcripts for tax years 2004-2007 and 2009-2013 in support of these claims. He also claimed, without corroboration, to be making payments on the medical debts at SOR 1.g-1.m.

Applicant's tax transcripts show that the March 2008 tax lien for \$17,005 was for tax years 2004, 2005, and 2006. The three tax returns for these years were filed on various dates in 2007. Applicant's tax liability for 2004 was largely satisfied when part of his 2010 income tax refund was seized in April 2011. Applicant made a handful of payments between July 2012 and November 2012, to resolve this account. Some positive balances caused by removal of civil penalties and interest were transferred to tax year 2006.

Applicant's 2005 tax liability was resolved when the IRS seized his 2008, 2009, and the remaining part of his 2010 income tax refunds, plus small payments made by Applicant between May 2008 and December 2009. Applicant established a payment plan for his 2006 tax liability in June 2012, and made regular payments on the account from December 2012 to August 2014. The IRS also seized his 2012 and 2013 income tax refunds, leaving Applicant with an account balance of \$325.66 on 8 September 2014. This account balance warranted the release of the March 2008 lien in October 2014. However, in October 2008, the IRS filed a lien to recover Applicant's delinquent

2007 taxes (SOR 1.d), which were \$4,799.08 on 8 September 2014. This tax year remains largely unaddressed. Applicant's 2007 and 2009-2013 income tax returns were timely filed. There is no evidence of his 2008 income tax return. Applicant had neither liability nor refund from his 2011 income tax return. None of the tax transcripts Applicant submitted address the two tax liens filed in January 2010 (SOR 1.e.-1.f), that Applicant claims were paid. Applicant had refunds from tax years 2009, 2010, 2012, and 2013 that were used to reduce prior-years' tax liabilities.

Applicant provided no documentation regarding his medical bills. He attributed his current financial problems to his not working between August 2001 and August 2010. However, he provided no information about the circumstances of his unemployment, or how he handled his finances during that period.

Applicant provided a personal financial statement (PFS) during his subject interview in September 2012 (Item 3), showing \$125 monthly negative cash flow. He provided no more recent statement or budget. He has not documented any financial or credit counseling. He provided no work or character references, or any evidence of community involvement. He documented no contacts with his creditors.

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

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

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to submit sufficient evidence to mitigate the security concerns. Applicant has a history of financial difficulties, which are ongoing, and seem unlikely to be resolved any time soon.⁴ Moreover, Applicant failed to timely file his Federal income tax returns for 2003, 2004, 2005, and 2006, resulting in at least \$17,000 in tax liability.⁵ Nevertheless, Applicant has been re-employed since August 2010. Aside from the tax transcripts, Applicant provided no evidence of any efforts to resolve the debts alleged in the SOR.

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; although the immediate causes of his problems may be unlikely to recur if he remains employed.⁶ Applicant provided no explanation for his lengthy unemployment, making it difficult to assess whether this was a circumstance beyond his control. Moreover, he has not demonstrated that he has been responsible in addressing his debt since his return to full-time work.⁷ Because he entered a repayment plan with the IRS in June 2012, and between his payments and the seizure of his tax refunds resolved the lien at SOR 1.c, I can find that allegation for him, while noting that he still has a balance due for tax year 2006. However, because he did not provide tax transcripts for 2002 and 2003 as requested by the DoD interrogatories, and did not take advantage of the opportunity to provide updated transcripts for 2006 and 2007, or for 2014, I can make no favorable findings for the remaining tax liens. Furthermore, Applicant provided no evidence that he made payments on, or otherwise resolved, the medical bills.

Applicant submitted no evidence to show that he received credit or financial counseling, and his debts are clearly not being resolved.⁸ There are no signs that Applicant has been in contact with any of the creditors alleged in the SOR except with the IRS, and thus he cannot establish that he has made a good-faith effort to address his other debts.⁹ Moreover, Applicant has mostly disregarded these financial obligations since his subject interview in September 2012. The only information he provided in his Answer was the release of the one tax lien. He provided no information in response to

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

⁵¶19(g) failure to file annual Federal, state, or local income tax returns as required . . .

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 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;

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

the FORM. Finally, Applicant failed to provide any documentation of his current employment performance, or work or character references upon which I might base a favorable "whole-person" analysis. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Subparagraph c:	For Applicant
Subparagraphs d-m:	Against 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