



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



In the matter of:)
)
) ISCR Case No. 14-02772
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

03/31/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 5 September 2014, the Department of Defense (DoD) issued an SOR to Applicant 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 11 May 2015, and I convened a hearing 11 June 2015. DOHA received the transcript (Tr.) 19 June 2015, and the record closed.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-5, hearing exhibit (HE) I, and Applicant exhibits (AE) A-E.

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 SOR allegations 1.b, 1.e-1.f, 1.h, 1.k-1.l, and 1.n-1.o. He denied the remaining SOR allegations. He is a 38-year-old security officer employed by a defense contractor since August 2010. He had been unemployed since September 2008, before obtaining this job. He has not previously held a clearance.

The SOR alleges, and Government exhibits (GE 3, 5), establish 14 delinquent debts totaling over \$19,000. GE 2 establishes that Applicant filed for Chapter 13 bankruptcy protection in September 2004, but the case was voluntarily dismissed in December 2004. Applicant admitted seven debts totaling just over \$4,000. He reported SOR debt 1.h on his February 2013 clearance application (GE 1), along with two delinquent debts that he paid off in May and July 2011 and a delinquent credit card that he subsequently settled for a 50% discount in April 2014 (GE 5).³

During subject interviews with a Government investigator on 18 March 2013, 26 March 2013, and 23 April 2013 (GE 4), Applicant was questioned about all the delinquent debts listed on his March 2013 credit report (GE 3). Applicant acknowledged all the delinquent debts as being his. All the delinquent debts are Applicant's individual debts, except for the joint account at SOR 1.c. The debts Applicant acknowledges as his include all the SOR debts except for SOR debt 1.k, which appears in the April 2014 credit report Applicant submitted with his response to DOHA interrogatories (GE 5). The delinquent accounts that Applicant provided proof of payment for in his response to the interrogatories were not alleged in the SOR.

Applicant's Answer to the SOR states that he disputed SOR debts 1.a, 1.c-1.d, and 1.m-1.n, debts he had previously told the Government investigator were his. He had also admitted SOR debt 1.n in his Answer. Applicant testified at length about the basis for each of the disputes (Tr. 37-51). However, Applicant did not dispute the debts in writing with the creditors. Instead, he disputed the accounts only through the credit bureaus. However, aside from the disputes noted by the credit bureau in AE A-C, Applicant did not provide any documentation he sent to the credit bureaus to dispute the debts.

Applicant's Answer to the SOR also documented that he paid SOR debt 1.g in July 2014 and paid SOR debt 1.l in June 2014. AE A appears to confirm payment of these debts, as well as SOR debt 1.j, which indicates that payment was made after charge off/collection. Accordingly, I find SOR 1.g, 1.j, and 1.l for Applicant. Applicant also claimed to have paid SOR debt 1.l in April 2014, but the receipt he provided with his

³Applicant used the wrong creditor name, but the correct account number, in listing this debt. The collection agent used the matching creditor account number with the correct creditor name in reaching a settlement agreement. Applicant did not document the actual payment of the proffered settlement amount. However, the Government did not allege this debt on the SOR.

Answer (and in his interrogatories) is for a different account with the same creditor with a different account number.⁴

AE A-C are partial printouts from an otherwise unidentified credit bureau report.⁵ Applicant has annotated AE A to assert that this printout concerns accounts that have been paid and closed. Unfortunately, except as noted earlier, none of the accounts are listed with sufficient detail to make a direct correlation to SOR debts. Moreover, many of the debts included are debts that were not alleged in the SOR. AE B contains Applicant's annotations of disputed accounts, and AE C contains annotations of open accounts. However, each of these exhibits contain the same flaws as AE A. AE D contains credit analyses for May and June 2015 that show that Applicant is making some progress reducing his overall account balances on his open accounts. But, both the credit bureau reporting the information, and one other credit bureau, report credit scores ranked "very poor," albeit with tiny upward movement.

Applicant attributed these delinquent debts to his separation from his first wife in 2004, and his subsequent divorce in July 2009; his two-years unemployment from September 2008 to August 2010; and his father's death in August 2013—for which he bore the expense of shipping his father's body back to his father's birthplace in Africa, as well as paying his mother's expenses to attend the funeral in Africa.

Applicant has not received any financial or credit counseling. He provided no budget. Applicant's April 2014 personal financial statement (PFS) and his testimony (Tr. 55) reflect several hundred dollars positive monthly cash flow, none of which appears to be directed to paying any of the SOR debts. Applicant did not provide any work references, or evidence of community involvement. His neighbors since 2004 consider him honest and trustworthy, and are aware of no reasons he should not be trusted with classified information (Tr. 88-91).

⁴Applicant's March 2013 credit report (GE 3) shows two separate accounts with this creditor, each with a distinct account number (each of the accounts is reported by two credit bureaus, each of which has the same account number and delinquent balance, as well as the same creditor number used to report the accounts). However, the collection agent at SOR 1.g, (a debt Applicant denied as paid) assigned its own account number to the account. Applicant's July 2014 proof of payment (Answer) has the same collection agent account number, but a different original creditor account number than listed in GE3 under either of the original creditor accounts. The April 2014 proof of payment that Applicant proffered as proof of payment on SOR debt 1.i actually reflects payment on an identifiable account with this creditor that was not alleged in the SOR because Applicant provided the same proof of payment in his interrogatories as proof of payment of a specific account the Government asked Applicant about. Although both Applicant and his wife claim that Applicant only had two accounts with this creditor, Applicant is not able to explain the discrepancy (Tr. 59-74).

⁵They presumably are from the same credit bureau identified in AE D, which contains specific identification, as well as an April 2015 letter from the credit bureau stating that its check of Applicant's disputes would not be completed until the end of May 2015.

Policies

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. 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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁶

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has delinquent debt dating back to at least March 2010 that he has not documented any action on, except perhaps to have disputed them on his credit report for reasons that could range from satisfaction of the debt to the simple expiration of the seven-year reporting period for most debts.⁷

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, although the stated causes may be unlikely to recur given his steady employment since August 2010.⁸ The circumstances that caused his financial problems may be considered beyond his

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

control, but he has not documented that he was responsible dealing with his debts.⁹ He paid some delinquent debts listed on his March 2013 credit report that the Government asked Applicant about on the April 2014 interrogatories. These debts were not alleged on the SOR. Applicant provided proof of payment on three SOR debts in his Answer to the SOR. However, he did not document any contacts with his remaining creditors. Nor did he document what he sent to the credit bureau to dispute his debts. Moreover, the documents he submitted purporting to show that accounts were paid and closed, or were disputed, do not show that SOR debts were paid and closed, or successfully disputed. Consequently, Applicant's documented efforts to date to not constitute a good-faith effort to resolve his debts.¹⁰

In addition, Applicant has received no credit or financial counseling. Further, in the absence of work references, or other evidence of community involvement, Applicant's two character references are insufficient to reasonably support a "whole person" analysis in favor of granting his clearance. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-f, h-l, k, l-o:	Against Applicant
Subparagraphs g, j, l:	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

⁹¶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;

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