



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
XXXXX, Xxxx Xxxxx) ISCR Case No. 14-02995
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

12/31/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 16 October 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 4 March 2015, and I convened a hearing 16 April 2015. DOHA received the transcript (Tr.) 24 April 2015.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-7, hearing exhibits (HE) I-III, and Applicant exhibits (AE) A-O. AE I-K were timely received post hearing. AE L-O were not timely received, but I admitted them when Department Counsel voiced no objection to the exhibits. The record in this case closed 13 May 2015, the day I informed the parties that the record closed with the admission of AE O. Consequently, I did not admit AE P (HE III).

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 allegations, except for SOR 1.a., which he denied, claiming that he had no knowledge of the debt. He is a 51-year-old support engineer employed as a defense contractor since September 2013. He was previously employed with other defense contractors in similar positions from approximately 1995 to present. He seeks to retain the security clearance he obtained in January 1999.

The SOR alleges, and Government exhibits (GE 2-3), establish nine delinquent debts totaling almost \$47,000. Applicant admits eight debts totaling nearly \$37,000. Record evidence establishes to a reasonable certainty that SOR debt 1.c was reduced to the judgment reflected in SOR 1.b,³ and SOR debt 1.d is a duplicate of SOR debt 1.h.⁴ Moreover, record evidence shows that the judgment at SOR 1.a, documented by GE 1, 2, 6, and 7, was enforced by garnishment order in July 2012 and paid by November 2012 (AE L; Tr. 39-41). Accordingly, the delinquent debt at issue in the SOR is just over \$30,000.

Applicant reported several of the SOR debts on his November 2013 clearance application (GE 1), but also reported several delinquent debts not alleged in the SOR. He reported having repayment plans with several of the creditors, and reported that he would pay two medical accounts (one of which is alleged as SOR debt 1.e) by the end of October 2013 (sic). However, he did not provide any corroboration of these claimed payment efforts in his Answer.

Applicant provided a 9 April 2015 letter from the collection agent on the judgment at SOR debt 1.b (AE A), confirming a repayment agreement for Applicant to pay \$125 monthly beginning the end of April 2015.⁵ AE K reflects that Applicant made the first

³The account number on the original debt does not follow through to the judgment. However, Applicant's November 2008 credit report (GE 7) reflects this account, by account number, having an original high credit limit of \$5,728 and being in collection with a delinquent balance of \$6,096. Applicant's January 2014 credit report (GE 6) reflects this account, again by account number, with the same high credit limit of \$5,728 and being in collection with a delinquent balance of \$4,011—the amount alleged in the SOR. Both credit reports reflect the judgment alleged at SOR 1.b. The court records reporting the judgment (GE 3) show that the \$9,800 judgment alleged in SOR 1.b includes interest, court costs, and attorney's fees. Nevertheless, the judgment amount is \$5,728, the high credit limit amount listed in the credit reports.

⁴SOR debt 1.h first appears in Applicant's November 2008 credit report (GE &), by account number, as a current charge account, with a balance on \$16,999 and an original high credit limit of \$15,000. The account was reported by both Equifax and TransUnion, two of the main credit bureaus. By Applicant's January 2014 credit report (GE 6), TransUnion reports the same account, by account number, in collection with a balance of \$17,667 on an original high credit limit of \$15,000. However, Equifax recorded an account with the same creditor, account number, original high credit limit, and collection balance, but attributed to a now-defunct department store, with a past-due balance of \$2,636—the amount alleged as SOR debt 1.d.

⁵The judgment creditor and collection agent listed in AE A are the same as listed on the judgment (GE 3). However, the judgment does not list an account number or other reference number aside from the case number, and neither the creditor account number nor the collection agent account number correspond to any numbers on the judgment.

payment on 5 May 2015. AE O purports to show that the remaining balance was paid on 13 May 2015. AE F appears to show that Applicant paid one of his outstanding traffic tickets (SOR 1.f and 1.g) on 3 March 2015.⁶ Applicant's remaining exhibits document payments or payment arrangements made to creditors, some of whom were listed on Applicant's clearance Application, but not alleged in the SOR.⁷

Applicant attributes his financial problems to the fact that his wife was unemployed following the birth of their second child in 2005 because she experienced medical complications from the delivery, and the fact that when she returned to work part time around 2006 she experienced brief periods of unemployment when her employment contracts ended in 2008 and 2010. It was not until late 2012, that she obtained full-time employment, where she currently makes \$87,000 annually (Tr. 32-33). Applicant makes \$130,000 annually.

Applicant presented no evidence of credit or financial counseling, or a budget. He provided no work or character references, and submitted no evidence of community involvement.

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

⁶However, AE F contains no reference information to connect the payment conclusively to either SOR 1.f or 1.g.

⁷A 2 April 2015 letter from Applicant's mortgage lender (AE B) establishes a six-month payment schedule beginning on 30 April 2015 to bring Applicant's delinquent mortgage current. AE J shows that Applicant made a lump-sum payment on 23 April 2015 to make up the arrearage. A 24 February letter from Applicant's home-improvement loan lender (AE C) offered Applicant three options to resolve his \$26,000 delinquency. Option 3 allowed Applicant to make 36 monthly payments of \$133. Applicant's 11 May 2015 email to Department Counsel (AE N) purports to show that Applicant made the first \$133 payment (as scheduled?) and paid the remaining settlement amount (\$4,655) on 11 May 2015. The total amount alleged to have been paid to settle the account represents an over 81% discount on the original debt. AE D shows that the judgment documented in GE 4 was paid in March 2015.. AE E shows that Applicant paid a medical account (listed on his clearance application but not the SOR) on 15 April 2015, while Applicant was searching unsuccessfully for SOR debt 1.e. AE G and I related to a medical bill neither alleged in the SOR nor listed on Applicant's clearance application. Similarly, AE H and M relate to a bank debt not at issue in this case.

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.⁸

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 2008 that he has not addressed, despite possessing the apparent means to do so.⁹ Applicant's wife experienced medical issues after the birth of their child in 2005, and her part-time and intermittent employment between 2006 and 2011 contributed to financial problems for them. However, she returned to work full time in late 2012. Applicant has documented very little in timely efforts to address his debts.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, although the stated cause may be considered unlikely to recur now that his wife's employment is stable.¹⁰ While the main causes of the financial problems may be considered circumstances beyond his control, Applicant has not been responsible in dealing with his debts. The one SOR debt paid before he received the SOR (SOR debt 1.a) was paid by garnishment, not through any efforts of his own. He documented no contact with any of his creditors before he completed his November 2013 clearance application. He documented no efforts to deal with his known debts between November 2013 and October 2014, when he received the SOR. He documented no efforts to deal with the SOR debts between October 2014 and April 2015, when the hearing was held.¹¹ Aside from the judgment that was paid by garnishment in November 2012, the earliest debt payment documented by Applicant was the March 2015 satisfaction of a judgment that was not alleged in the SOR (AE D). The flurry of post-hearing activity, most of which was aimed at debts not alleged in the SOR, or even listed by Applicant on his clearance application, does not constitute a

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;

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;

good-faith effort to resolve his debts, but a rather transparent attempt to appear to be resolving his debts.¹²

In addition, Applicant has received no credit or financial counseling. He has no budget. Consequently, it cannot be said that the problem is being resolved.¹³ Further, Applicant provided no character or employment evidence 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-b, e-i:	Against Applicant
Subparagraphs c-d:	For Applicant (duplicates)

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

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

¹³¶ 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;