



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



In the matter of:)	
)	
XXXXXX-XXXXXX, XXXXXXXXXXX XXXXX ¹)	ISCR Case No. 14-00279
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

10/31/2014

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,² I deny Applicant's clearance.

On 24 April 2014, the Department of Defense (DoD) issued an SOR to Applicant detailing security concerns under Guideline F, Financial Considerations.³ Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings

¹Applicant uses a hyphenated last name. The Statement of Reasons (SOR) improperly removed the hyphenated portion of the legal name Applicant used on her clearance application (GE 1, §1-4). I have corrected the heading to reflect the proper name for Applicant.

²The record consists of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-T. AE I-T were timely received post-hearing, although they were incorrectly identified as AE F-Q. I have correctly re-lettered them as AE I-T. The record in this case closed 15 July 2014 when Department Counsel indicated no objection to Applicant's post-hearing exhibits.

³DoD 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.

and Appeals (DOHA). DOHA assigned the case to me 20 May 2014, and I convened a hearing 2 July 2014. DOHA received the transcript (Tr.) 10 July 2014.

Findings of Fact

Applicant admitted the SOR allegations. She is a 56-year-old consultant, largely self-employed as a defense contractor since the incorporation of her company in November 2009. She has held a security clearance for more than 17 years. Her current periodic reinvestigation was initially for a direct employment she took with another contractor in January 2013, but now it is for her employment on a Government contract her company obtained in February 2013. From 1997 until May 2011, she was continuously employed, first by a series of Government contractors, then by the Government, then by another Government contractor, and then by her own company's Government contracts (Tr. 52-53).

Applicant is the second eldest of 10 siblings, four boys and six girls. She is currently married to what may be her third or fourth husband (GE 1, § 5), who she married in May 2010 and whose last name she did not take.⁴ Applicant has an undergraduate degree and a post-graduate degree (obtained in December 1997). She has an adult son, born in July 1977. She also appears to have three grandchildren.

The SOR alleges, Government exhibits (GE 1-3) establish, and Applicant admits three delinquent collection accounts totaling nearly \$59,000. These accounts were all with a nationally-recognized federal savings bank whose primary focus is addressing the banking needs of U.S. military personnel and Government employees worldwide. She opened the three accounts between October 2007 and September 2007 (Tr. 74). Applicant paid two accounts totaling \$26,000 [SOR 1.a (AE G) and 1.b (AE H)] on 27 June 2014, and the remaining debt of \$29,000 [SOR 1.c (AE F)] on 30 June 2014. On 8 July 2014, Applicant completed eight on-line money management courses (AE C, I).⁵ She and her husband report over \$13,000 current positive monthly cash flow (AE B).

From October 2009 to May 2011, Applicant was employed—through a Government contract held by her employer—as an information operations planner in support of U.S. military operations overseas. Her remuneration on the contract was \$1,000 per calendar day, or between \$546,000 and \$608,000, depending on the actual

⁴Applicant's hyphenated legal last name consists of her birth name and what would appear to be a former married name. However, the name used appears nowhere on her clearance application, neither in her list of other names used nor in her list of current and former spouses. Her son uses the same last name, which Applicant lists as his birth name and states that he has used no other name. Consequently, there is no record evidence of the origin of this name.

⁵Applicant completed courses in Money and Values, Setting Goals and Priorities, Credit Reports, Managing Income and Expenses, Consumer Strategies, Controlling Debt, Building Savings, and Creating Wealth. She did not provide any documentation of course content for any of the courses. She described (Tr. 47) what she learned: "financial planning, number one. . . save for . . . a rainy day. . . Number 2, . . . don't buy anything you can't pay off . . . try to reach out to a financial planner . . . "

start and end dates of the contract.⁶ The contract had a fixed end date, although there was always the possibility of an extension, a follow-on contract, or a new contract in a different location. Applicant's husband also served with her on the contract from June 2010 to March 2011, although the amount of his compensation during that time is not part of the record (Tr. 31). Applicant's performance during the contract was highly rated by one of her supported commanders (AE A) and the senior U.S. commander in country (AE E).

Applicant also served as a civilian member of the U.S. military from September 2008 to October 2009.⁷ Applicant's clearance application describes two different periods of temporary duty initially. She was on temporary duty for training in the U.S. from September-December 2008 and from December 2008-April 2009. She then deployed overseas from April 2009 to October 2009, before accepting the position discussed above. Applicant returned to the U.S. briefly between the October 2009 deployments (Tr. 70-71). Applicant was also deployed to a different country with a different company from March 2008 to September 2008, before going to work for the military (GE 1). Applicant and her husband had about \$30,000 in savings when they returned to the U.S. in May 2011.

In 2009 and 2010, Applicant's 36-year-old son encountered financial problems with his business—a sole-proprietorship, pre-owned vehicle dealership—as a result of the financial recession that began in 2008. In 2009 and 2010, she gave her adult son, or paid on his behalf, approximately \$218,000 (AE J). Of the 15 debts she paid, only six came with even minimal supporting documentation.⁸ Of those six, five are clearly related to the son's vehicle business; the fifth is not obviously connected.

⁶The record is silent on whether Applicant's foreign income was subject to any beneficial tax treatment because of the circumstances under which it was earned. Nor is it clear what, if any, actual expenses Applicant incurred while deployed with U.S. forces. Applicant did not remarry until May 2010, so there would be little requirement to be maintaining two households.

⁷The record is also silent on what her salary was during this time, or what deployment incentives were available for her. In any event, she would have had few outside expenses during her deployment.

⁸AE J is styled a "Spreadsheet of Itemized Loan Breakdown" and lists 15 debts totaling over \$218,000. However, there is no information in AE J to indicate when all those obligations were incurred, or to clearly delineate whether the debts are hers or her son's. Before Applicant's son received money from his mother, he borrowed \$37,000 from a family friend (possibly the ex-husband of one of Applicant's sisters?), of which his mother paid nearly \$27,000 (AE L). He borrowed \$5,000 from his aunt (Applicant's sister), which his mother repaid (AE P). He borrowed \$10,000 from his uncle (Applicant's brother), which his mother also repaid (AE Q). In July 2009, Applicant paid \$11,000 to an attorney representing one of her son's clients (with confirmation sent to Applicant's other sister—a woman with the same last name as the family friend in AE L), related to delivery of a vehicle (AE O). In 2010, Applicant's son sold a vehicle to a woman, then let her return it for a full refund several weeks later. Applicant repaid the woman over \$39,000 in incremental payments in 2010, from a checking account in her name and her son's name (AE M). She also made 11 wire transfers to a named individual totaling \$21,760 (AE J, T) in 2010. Applicant did not explain what the debt was for, and AE T is too illegible to total the payments exactly.

However, of the remaining nine debts, only one appears related to the failed vehicle business. Three debts are clearly personal debts of Applicant's son. The other five are not explained in any way.⁹ Further, Applicant also took a \$30,000 cash advance on a line of credit she had obtained in 2006 (SOR 1.c), and used it to help her son with his business debts (Tr. 49-50).

Applicant's son characterizes these funds as a loan, but neither he nor Applicant provided any loan documents to support that claim—documents that would be essential for Applicant to avoid any potential gift-tax problems associated with making a \$200,000 gift to her son (AE H).¹⁰ Applicant testified it was a gift if for no other reason that she did not expect that he would ever be able to repay it (Tr. 67-68, 72). Applicant's current tax accountant was not involved with her 2010 tax filings, but she was current with her 2013 filings, albeit with extensions (AE N). However, in July 2014, after the hearing, Applicant paid the IRS an additional \$39,440 for tax year 2010 (AE R). Applicant did not explain why she owed the IRS an additional \$39,440.

When Applicant's contract expired in May 2011, she returned to the U.S. She was unable to obtain contracts for her company, and she was not otherwise able to obtain employment in her career field. She was unemployed from May 2011 to February 2013, when she obtained employment with another Government contractor.¹¹ That employment only lasted six months because the company lost the contract in August 2013, but her after-tax salary was between \$48,000-\$96,000 (Tr. 55-56). Her husband, a retired U.S. military officer whom she married in May 2010, was not otherwise able to help with family finances because his military retired pay was mostly going to his ex-wife as alimony (Tr. 57). He was unemployed from March 2011 until February 2013, when the company obtained a Government contract that deployed him overseas (Tr. 54-55).

Consequently, Applicant borrowed \$20,000 from her older sister (later repaid) (Tr. 24-26), and paid day-to-day living expenses with the credit cards at SOR 1.a and 1.b. However, she was eventually unable to keep up with the minimum payments, and the accounts fell delinquent. The record is not clear if Applicant also borrowed money

⁹In addition to the paid debts that clearly relate to the failed vehicle business. Applicant appears to have paid a \$2,000 debt to the Internal Revenue Service (IRS) for her son, another \$4,300 for her young grandchildren's school tuition, and almost \$12,000 for the grandchildren's medical insurance. The remaining six debts have no documentation. Four of the six are to named individuals who are not otherwise identified, although one was listed as another vehicle dealer; one debt is listed by first name only; one \$13,000 debt is merely labeled "miscellaneous."

¹⁰Moreover, her son incorrectly states that he had to borrow the money from his mother because his business was operated as a sole proprietorship and thus he could not file for bankruptcy protection. Of course, he could file for bankruptcy protection, both as a business and personally, possibly both. The real problem with bankruptcy appears to have been the fact that he borrowed money from family members and other creditors he felt personally beholden to. Bankruptcy would have extinguished these creditors' claims.

¹¹However, while her clearance application reflects this unemployment, her curriculum vitae (AE D) reflects continuous employment through this period.

from other family members (Tr. 40). There is no evidence Applicant or her husband filed for unemployment compensation.

Applicant's company had a small contract early-to-mid 2012 performed by her husband, but they put all the contract payments, otherwise unspecified, back into the company (Tr. 41). He was also employed on a contract beginning in February 2013, earning over \$500,000 for the partial year (Tr. 39). They put all the contract payments back into the company in 2013 as well (Tr. 42). Applicant's husband deployed for 16 months to a foreign country and plans to return there for another three months in September 2014 (Tr. 36).¹² The company is currently doing extremely well (Tr. 34). The business income for the first six months of 2014 was about \$1.5 million (Tr. 38-39). Applicant and her husband currently take monthly distributions of about \$10,000 each, for an annual income of \$120,000 each (Tr. 39, 61). They took between \$5,000-10,000 per month total in 2013, for \$60,000-\$120,000 annually (Tr. 57). This does not include the \$48,000-\$96,000 after taxes that Applicant took home February-August 2013, when she was a direct employee of another Government contractor (Tr. 55-56). Applicant and her husband have \$15,000 in their personal savings account and about \$5,000 in a checking account (Tr. 37, 60). The company structure permits them to distributions (i.e., income) whenever their personal finances so dictate. She leaves the rest in the company, where it receives preferential tax treatment as business income which can be balanced against business expenses.

Applicant attributed her financial problems to not understanding what had happened to the U.S. economy between 2008 and her permanent return to the U.S. in May 2011 (Tr. 48). This is difficult to believe for two reasons. First, Applicant was in the U.S. September 2008 to April 2009, when the economic downturn was well under way. She could barely have missed the central placement of the economic downturn in campaign advertising for the November 2008 Presidential election. Moreover, she knew by the end of July 2009—the earliest documented payment on behalf of her son—that his business was failing. In fact, this payment occurred while she was deployed overseas by the military, before she obtained the \$1,000-per-day deployment.

Applicant also attributed her financial problems to her May 2011-February 2013 unemployment (Tr. 48). This is equally difficult to believe because she failed to account for the state of the economy in 2009-2010, failed to account for the fact that her employment had a fixed termination date, and failed to prudently save any more than \$30,000 from the roughly \$550,000-\$610,000 she was in the process of earning between October 2009 and May 2011.

She claimed, without corroboration, to have maintained regular contact with the original SOR creditor until about May 2012, at which point the three accounts were charged off and referred for collection (Tr. 62-63). She did not contact the collection agents on the accounts until February 2013 (Tr. 63). She was looking to start making monthly payments in May 2013, but then decided she should just pay them off. She had

¹²February 2013 through June 2014 is approximately 16 months.

agreed with at least one of the creditors to begin making \$1,000 monthly payments. However, when she realized that her clearance might still be in jeopardy, she took sufficient income from the company to allow her to make the lump-sum payments noted above. She attributed her ability to repay the SOR debts to the fact that the company has recently become profitable, allowing her to pay the debts in June 2014 (Tr. 46).

Applicant's older sister, who also has a clearance and is employed in a national security environment, considers Applicant honest and trustworthy, and recommends her for her clearance. So, too, does her husband and business partner.

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.¹³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's records are not a model of clarity, but her records and testimony clearly establish an important fact: between at least February 2013 and June 2014, Applicant deliberately failed to resolve the SOR

¹³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

debts, despite clearly possessing the means to do so.¹⁴ Between February 2013, when her husband deployed overseas and June 2014, the company earned \$2 million. Applicant and her husband left most of that money in the company, but even the distributions they took during 2013 were enough for her to have contacted her creditors and made payment arrangement on the SOR debts.

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are recent and not infrequent. The 2008 economic collapse had already begun when she began to bail out her adult son. The potential for another economic downturn is part of the contracting landscape.¹⁵ Applicant has no guarantee of ongoing contracts for her company, despite its current good fortune. There are too many variables for Applicant to be secure in her expectation of future contracts.

Moreover, the 2008 economic downturn had already begun, and while a future economic downturn may be a circumstance beyond her control, maintaining too little in financial reserves is a circumstance well within her control. She effectively gave her son over \$218,000 between 2009 and 2010. This was while she was earning \$546,000-608,000 between October 2009 and May 2011. These numbers do not include what her husband was earning between June 2010 and May 2011. Even a straightforward mathematical calculation shows that she should have had plenty of assets to tide her over after May 2011. In 2010, she was earning \$365,000. She still made \$147,000 after paying her son's debts.

Where did that money, or her husband's 2010-2011 income, go that it was not available to tide them through their unemployment? Particularly where Applicant and her husband were later found to owe another \$39,000 in 2010 taxes to the IRS on their joint personal return. Applicant and/or her company earned \$365,000 in 2010; her husband and/or the company earned half whatever his annual salary was. Consequently, the conditions that caused the problem were not beyond her control because Applicant failed to account for an economic downturn that was already here and she failed to consider a pending unemployment that was clearly foreseeable. Furthermore, she failed to act responsibly under the circumstances. First, she failed to plan for the pending unemployment. Second, she took no meaningful action to address the SOR debts until several weeks (giving her an expansive view of her testimony) before the hearing.¹⁶

Further, the payments she made on the eve of the hearing cannot be considered good-faith payments, coming as they did late in a response to financial problems that she acknowledged in June 2013, when she listed them on her clearance application,

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

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

¹⁶ ¶ 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;

and that she was fully aware were raising concerns for her clearance once she received the SOR in early May 2014.¹⁷ Applicant claimed that her company had only recently become profitable, allowing her to pay the SOR debts in late June 2014. However, Applicant never explained how a company with gross income of \$500,000 in 2013, with only one employee from February 2013 to September 2013, was unprofitable. And that does not include her personal income from February-August 2013.

Applicant's desire to help her son through his financial difficulties is noble, understandable, even commendable. However, it was not a legal obligation, as is resolving her debts. That made it Applicant's choice. Moreover, Applicant's execution of her perceived maternal obligation can be fairly characterized as extravagant, if not profligate.

Applicant's actions since she received the SOR bespeak more an effort to check off as many of the mitigating conditions as possible rather than a good-faith effort to address her indebtedness. Applicant is a well educated woman. The things she claimed to have learned in her finance courses are things she almost certainly already knew. Further, it is impossible to know, because Applicant provided no documentation, when she first signed up for the courses or what each course curriculum involved. It is certain that she completed all the courses the week after her hearing.¹⁸

The concern with Applicant is that while she may credibly state her intent to avoid financial problems in the future, and she may have the means over the short haul [through the end of 2014, or maybe the end fiscal year (FY) 2015 in September 2015] to do so, she does not actually have any track record of doing so. She and her husband focused exclusively on building their business from February 2013 to at least September 2013, expanded the business in September 2013 and still focused almost exclusively on its continued growth until well into 2014. They currently report having \$20,000 in personal bank accounts, \$10,000 less than they had in May 2011, despite having more than twice the income. They reported enough distributions to show \$13,000 positive monthly cash flow. What they have not shown is how the company's current good fortune, and thus their personal good fortune, can be expected to continue beyond the immediate future. They are already painfully aware that there is no guarantee of follow-on contracts or new contracts. Without a clearer view of the company's prospects, and thus, their prospects, I cannot conclude that financial problems are unlikely to recur. Further, while she has favorable character and employment evidence, the possibly unbiased reviews from 2011 are old, and the more recent reviews from the hearing are certainly biased, making it difficult to establish a "whole-person" analysis supporting a favorable clearance action. I conclude Guideline F against Applicant.

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

¹⁸¶ 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;

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-c: 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