



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



In the matter of:)	
)	
XXXXX , Xxxxxxx Xxxxxxx)	ISCR Case No. 14-01097
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connolly, Esquire, Department Counsel
Christopher Morin, 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 security clearance.

On 29 October 2014, the Department of Defense (DoD) issued a Statement of Reasons (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 17

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibits (AE) A-D AE D was timely received post hearing. The record in this case closed 28 October 2015, the day Department Counsel stated no objection to AE D.

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.

August 2015, and I convened a hearing 6 October 2015. DOHA received the transcript (Tr.) 14 October 2014.

Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.f, 1.g, and 1.r. She is a 45-year-old systems administrator employed by a defense contractor since November 2011. Except for six months between April 2002 and September 2002, Applicant has been continuously employed since March 2001, in positions of increasing authority. She seeks to retain the clearance she has held, as needed, since at least August 2003 (GE 1).

The SOR alleges, and Government exhibits (GE 2, 3) substantiate, 20 delinquent debts totaling nearly \$30,000. Applicant admitted 17 debts for nearly \$24,000. She also admitted filing for chapter 7 bankruptcy protection in September 1995 and November 2001, and receiving discharges of dischargeable debts in January 1996 and March 2002, respectively (GE 4, 5). Applicant successfully disputed SOR debt 1.f as having been paid in 2009, and documented that she had paid SOR debt 1.g in September 2013 (Answer). She did not document her dispute of SOR debt 1.r. She also established that SOR debt 1.h was a duplicate of SOR debt 1.b. Consequently, there are 17 debts totaling just over \$22,000.

Applicant filed for chapter 7 bankruptcy protection in September 1995 (GE 4), when she was 25 years old, because she had taken on credit and loan debt to provide financially for her sister (who had promised to pay the accounts, but then did not) and family (Tr. 52). She claims to have learned a valuable lesson then about opening credit accounts for someone who could not get credit on their own (Tr. 128). Applicant again filed for chapter 7 bankruptcy protection in November 2001 (GE 5) because of financial problems related to her divorce from her recently-become-ne'er-do-well husband (Tr. 53-54). Her husband had gotten involved with drugs, wrecked her car, stopped working, and taken household money intended for bills (Tr. 54). Applicant did not seek credit counseling before filing either bankruptcy (Tr. 55).³

Applicant listed five delinquent debts totaling about \$31,000 on her clearance application (GE 1). She listed a repayment plan to the IRS and an education loan debt (SOR 1.g) that she had resolved. She also listed a medical judgment (SOR 1.a), a judgment for unpaid rent (SOR 1.b), and a repossessed automobile (SOR 1.c). She stated that she was contemplating a third bankruptcy filing to resolve these debts.

³Bankruptcy law at the time did not require financial counseling as it now does.

Applicant's Answer claimed to have made payment arrangements on SOR debts 1.b,⁴ 1.e,⁵ 1.l/t,⁶ and 1.m.⁷ She identified nine other debts (SOR 1.a, 1.c, 1.d, 1.l, 1.k, 1.n, 1.o, 1.q, and 1.s) that she planned to make repayment schedules for by July 2015. However, she was unable to make the payments as promised. At the time of the hearing, she still owed \$625 on SOR debt 1.b.⁸ She still owed \$193 on SOR debt 1.e, \$705 on SOR debt 1.l/t, and \$273 on SOR debt 1.m. In each case, she was able to make some payments, but then found she needed the money for other things.⁹ She never established repayment plans for the nine debts she identified for resolution in July 2015 (AE A).

Applicant entered a debt management plan (DMP) in October 2015 (AE B), that obligated her to pay \$277 monthly, beginning mid-October 2015 and continuing until at least June 2019. The DMP estimated her outstanding debt at \$10,302, but did not identify which debts were included in the plan. According to Applicant (AE A), she was going to pay the remaining balances on SOR debts 1.b and 1.e in mid-October (Tr. 63, 68). The remaining 14 debts were to be included in the DMP.

However after the hearing, Applicant undertook a new plan. She paid the remaining settlement balances or negotiated new settlement balances on seven debts: SOR 1.e, 1.h, 1.l-1.n, 1.p, and 1.s (AE D). Only 3 debts were enrolled in a new DMP: SOR 1.c and 1.l-1.j. Except as noted above, Applicant has not had any contact with her creditors.

Applicant attributed her financial problems to medical issues related to an automobile accident as well as providing financial support for her minor daughter and the three grandchildren who live with her.¹⁰ However, she acknowledged that none of

⁴In November 2014, the creditor offered to settle the now-\$4,350 debt for \$2,000, payable in \$500 monthly installments from November 2014 to February 2015.

⁵Applicant agreed to pay the \$772 debt through \$198 monthly installments from November 2015 to February 2015.

⁶Applicant agreed to satisfy the combined \$880 balance by paying \$25 dollars in November 2014 and \$50 monthly payments beginning in December 2014, until the paid was paid.

⁷Applicant agreed to make an initial \$300 payment in November 2014, followed by \$25 monthly payments until the debt was paid.

⁸She made no payments on the agreed payment plan. The \$625 due represents a further reduction by the creditor (Tr. 64-65; 123-124).

⁹She made three of the four payments on SOR debt 1.e, She made the first four payments (through February 2015) on SOR debt 1.l/t. She made the first two payments on SOR debt 1.m.

¹⁰Applicant's explanation for her daughter's pregnancies stretch credibility. According to Applicant, her daughter was sexually assaulted when she was 14 and got pregnant (after having been molested when she was nine). Yet the daughter would not identify the assailant and chose to keep the baby, who was born in 2009. Her daughter had two more children out of wedlock, in 2011 and 2013, when she was still a minor. The

her children were paying their own bills, she was an overindulgent mother, and she had made little progress on her debts since her September 2013 clearance application (Tr. 127-129). 27-28).¹¹

Applicant's work references (AE C) consider her honest and trustworthy, and recommend her for her clearance. However, neither of them appear to be aware of her financial problems. A third coworker also considers her honest and trustworthy. She is aware that Applicant had financial problems that she started working on when she learned about her prospective clearance hearing (Tr. 41-43). Her best friend since age 11 is aware of Applicant's financial problems, which she attributes to Applicant always helping her kids (Tr. 35-39). The suggested action plan recommended by the DMP (AE D) notes that Applicant should "only offer help and assistance to your children as you have the ability to do so without putting yourself in a financial hard spot."

Applicant has not documented any financial or credit counseling aside from that documented in her October 2015 DMP (AE D). She presented no personal financial statement or budget.

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

daughter knows who the fathers are, and has child support orders against them that she does not pursue. Applicant testified it was a fair statement that her daughter did not pursue child support because she had a mother who would pay to support her and her children (Tr. 120-122).

¹¹Several of the SOR debts are for delinquent cell phone accounts on which she has multiple lines, for herself and her children, including her adult children. She also pays the rent on a house in another state rented by an adult son who lives with her.

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.¹²

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Setting aside for the moment the question of whether Applicant’s financial difficulties are reasonably attributable to circumstances beyond her control, she made no effort to address her substantial delinquent debt until after she received the SOR in November 2014. This despite the fact that she reported several delinquent debts on her September 2013 clearance application (GE 1) and discussed all of these debts during her subject interview with a Government investigator in November 2013 (GE 2).¹³

The mitigating conditions for Financial Considerations offer Applicant insufficient help. Her financial difficulties are both recent and multiple. The circumstances which caused them are likely to recur, unless she can break herself of the habit of paying the living expenses for all her adult children.¹⁴ Unexpected medical bills from her automobile accident and her minor daughter’s three pregnancies may be considered circumstances beyond her control, the larger cause of her financial problems is her financial support to her adult children. Moreover, she did not act responsibly to address her debts because she took no action for many years to organize her indebtedness.¹⁵

Whatever counseling comes as part of her DMP, that program has been undertaken late in the process and it is certainly too early to conclude that the problem is resolved or under control.¹⁶ Finally, Applicant’s efforts to resolve her debts after receiving the SOR cannot be considered to have been made in good faith.¹⁷ Moreover, they were clearly undertaken only because her clearance was at risk. Her work and character references are inadequate to support a “whole-person” analysis to overcome the security concerns raised by her past track record of financial irresponsibility dealing

¹²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

¹⁵¶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.

¹⁶¶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.

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

with her debts. Indeed, one witness confirms her irresponsibility by supporting her adult children to her financial detriment. Consequently, I cannot find that Applicant has put her financial problems behind her, or is likely to do so in the foreseeable future. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-e:	Against Applicant
Subparagraphs f-h:	For Applicant
Subparagraphs i-v:	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 access to classified information. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge