



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



In the matter of:)	
)	
XXXXXX, Xxxxxxxx Xxxxxxx)	ISCR Case No. 14-01243
)	
Applicant for Security Clearance)	

Appearances

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

04/03/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 30 May 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 24 October 2014, and I convened a hearing 19 November 2014. DOHA received the transcript (Tr.) 28 November 2015. The record closed 31 December 2014, the day Department Counsel indicated no objection to Applicant’s post-hearing exhibits.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-3, hearing exhibit (HE) I, and Applicant exhibits (AE) A-B. AE B was timely received post-hearing.

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. She is a 57-year-old customer service manager employed as a defense contractor since September 2011. She previously held a clearance in 2004, when she was employed as a desktop support manager. Applicant was continuously employed from March 2003 to February 2011, when she was laid off because she was unable to pass a required certification examination (Tr. 27). She received a severance package from her employer, which amounted to continuation of her \$75,000 per year salary during her unemployment, which lasted March-April 2011. In April 2011, Applicant became employed by a temporary employment agency at an annual salary of \$70,000. In September 2011, the company that was using her temporary services hired her directly, at an annual salary of \$95,000.

The SOR alleges, Government exhibits (GE 1-3) establish, and Applicant admits 21 delinquent accounts totaling nearly \$45,000. At hearing, the Government withdrew SOR debt 1.d because it was a duplicate of SOR debt 1.u. Applicant also demonstrated that she had no remaining liability on her 2007 home foreclosure, making the total amount at issue just over \$16,000. Applicant also admitted a Chapter 7 bankruptcy discharge in November 1999, wherein she was relieved of about \$22,000 in debt.

The 19 delinquent accounts consist of 14 medical debts, one credit card debt, one utility debt, one educational loan account, a debt to a storage facility, and an unpaid parking ticket. The 14 medical debts total about \$2,700. All of the medical debts but one are each under \$300. Applicant had medical insurance for all periods of time relevant to this decision. The unpaid medical balances represent deductibles, co-insurance, and co-pays not covered by insurance. Overall, eight of the delinquent debts are each less than \$100, four more are each less than \$200, and three more are each less than \$300.

Applicant listed three delinquent debts on her February 2013 clearance application (GE 1), corresponding to SOR 1.k, 1.m, and 1.n. She traced the origins of these delinquent debts to July 2006, December 2008, and July 2008, respectively. She was not entirely sure about the circumstances of the debts, but stated she would investigate the debts and begin payments as necessary. Sometime later in 2013, Applicant discussed the SOR debts with a Government investigator (Tr. 60). However, Applicant did not begin to address her delinquent debts until after she received the SOR (Tr. 62).

In late July 2014, Applicant paid seven delinquent debts (1.a, 1.c, 1.h, 1.l, 1.r, 1.t, and 1.u). She paid SOR debt 1.b with two payments in August and September 2014; she paid SOR debt 1.p with two payments in July and August 2014. She consolidated SOR debts 1.e, 1.g, and 1.q and agreed to pay \$125 per month for five months beginning in August 2014; she documented payments for August-November 2014. She agreed to pay SOR debt 1.f in August 2014, but did not actually pay it until December 2014. In August 2014, she established repayment plans for SOR debts 1.m and 1.n, to pay \$150 monthly and \$158 monthly respectively until the balances were paid. She documented monthly payments for August-November 2014 for debt 1.m and for August-

December 2014 for debt 1.n. In November 2014, she paid SOR debt 1.s. In December 2014, she agreed to start paying \$150 monthly on SOR debt 1.k in December 2014, and documented the December payment. In her answer to the SOR, Applicant claimed to be making \$74 monthly rehabilitation payments on her delinquent federal education loan (SOR 1.j; \$150 past due on a balance of \$10,390). However, she was clearly unable to continue making the payments. Her post-hearing exhibit (AE B) showed that she was to begin paying \$72 monthly beginning in December 2014, and was to make a lump-sum payment of \$500 to bring all late fees current. She documented the required December payment. She has not taken any action on her unpaid parking ticket (SOR 1.o).

Applicant's 1999 bankruptcy discharge was due to her divorce the same year. At her parents' behest, Applicant bought their home for \$155,000 in November 1998. However, Applicant was unable to keep up the payments and the home was foreclosed upon in 2007. Complicating Applicant's finances after her 1999 divorce were her status as a single parent with minor children and medical issues she began to experience. She had expenses related to her mother's death in 2011, and her father's death in July 2013. The last few years of her father's life, she was providing financial support of \$6,000-7,000 per year. In addition, she has had other delinquent accounts to resolve that were not alleged in the SOR (Tr. 54).

Applicant has not documented any financial or credit counseling. She presented no budget showing her current financial status. She provided no work or character references.

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.

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: Applicant took no action to address her delinquent debts until after she received the SOR, despite clearly possessing the means to do so.³ After Applicant’s November 1999 bankruptcy discharge, she had a clean financial slate. Yet, her current delinquent debt dates back to at least July 2006 (SOR 1.k), on an account she only began paying in December 2014. While Applicant has experienced financial pressures as a result of her single motherhood and her medical issues, she has not really demonstrated why her substantial salary was inadequate to address her debts when due, or at least make payment arrangements over time.

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are recent and frequent. The circumstances that lead to her financial problems, while beyond her control, are certainly common and thus not unlikely to recur.⁴ While the circumstances that caused the indebtedness were beyond her control, she cannot be considered to have acted responsibly in addressing the debts, because the debts have lingered for many years without resolution or serious efforts toward resolution.⁵ Further, Applicant did not undertake any effort to address her debts until she received the SOR in July 2014 (GE 2), and the actions she took constitute not so much a good-faith effort to resolve her debts, but a transparent attempt to appear to be taking meaningful action.⁶ Finally, Applicant has undertaken no financial or credit counseling to insure that her finances do not become a problem in the future.⁷

The concern with Applicant is that while she may credibly state her intent to avoid financial problems in the future, and she has made substantial progress on her debts in the five months since she received the SOR, she has not actually demonstrated that she is capable of living within her means. Further, she presented little evidence to help

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

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

⁵¶ 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;

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

⁷¶ 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;

establish a “whole-person” analysis supporting a favorable clearance action. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-c:	Against Applicant
Subparagraph d:	For Applicant (Duplicate)
Subparagraphs e-t:	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