



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



In the matter of:)	
)	
XXXXXXXX, XXXXXXXX XXXXX)	ISCR Case No. 14-01537
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro Se*

06/25/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 19 June 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) 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 21 November 2014 and I convened a hearing 6 January 2015. DOHA received the transcript 15 January 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibit (AE) A.

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 denied the SOR financial allegations, except for SOR 1.c. He is a 45-year-old system administrator employed by a defense contractor since April 2009. He has not previously held a clearance. However, he previously had favorable background checks in October 2005 and September 2008 for work through other Government agencies (GE 1).

The SOR alleges, and Government exhibits (GE 1-5) substantiate, six delinquent debts totaling almost \$25,000. Applicant admits one \$3,000 debt. Nearly \$21,000 of the debt is for a state sales tax judgment obtained in February 2009 (SOR 1.a) and delinquent Federal taxes for 2011 (SOR 1.g).

Through a series of voluntary wage garnishments and additional payments, Applicant and his wife satisfied SOR debt 1.a in June 2014 (Answer). He disputed SOR debts 1.b, 1.d, and 1.e, and succeeded in having SOR debt 1.d removed from his credit report in January 2014 (Answer). He filed his 2009 Federal income tax return in July 2014, showing a refund due of \$1,600 (Answer). He paid about half of his outstanding 2011 Federal income taxes in early July 2014, with the other half due the end of July 2014 (Answer). He has asked the vendor for SOR debt 1.c to provide him with an accounting for the amounts owed, but the vendor has not responded.

From 2005 to 2008, Applicant and his wife ran a restaurant in a vacation destination. They turned a profit the first year, but did not during the second and third years as the economy declined. They made a decision to not renew their lease when it expired in 2008. However, business had been so bad that they were faced with the choice of paying their employees or paying the state sales taxes owed. They opted for paying their employees, resulting in the tax judgment at SOR 1.a. SOR debt 1.c is also related to shuttering the business, as it involves cooking fuel, and a question of whether Applicant or the new lessee of the restaurant should be responsible for the debt. This is the requested accounting that Applicant has not received. Finally, Applicant's failure to file his 2009 Federal income tax return on time (SOR 1.f) also appears to be related to shuttering his business, as they were confused about how to reconcile the closing of their chapter C corporation with the tax requirement of his wife's limited liability corporation, which remains in business. The return has now been filed and shows a refund due. The two disputed debts that Applicant has received no response on (SOR 1.b and 1.e) total \$130—an insignificant amount for security concerns.

Applicant's financial problems were largely related to the failure of his restaurant business. However, he began addressing his debts as soon as he was re-employed at a significant salary. The state would not allow Applicant to establish a repayment plan for the delinquent sales taxes, so Applicant and his wife consented to voluntary garnishment of their wages to satisfy the debt. The only debts not fully resolved are the two disputed debts for \$120 and the cooking fuel judgment. However, Applicant is ready to pay those accounts if they can be shown to be his.

The founder and chief operating officer of Applicant's current company considers him honest and trustworthy and recommends him for his clearance (AE A). Applicant presented no evidence that he has received financial or credit counseling.

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 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.³

Analysis

The Government established a case for disqualification under Guideline F, he acquired significant debt.⁴ However, he began to address his debts once he regained employment in April 2009.

Under his current plan, Applicant has resolved SOR debts 1.a (the largest single debt) and 1.g. He filed his delinquent Federal income tax return, but has a refund due. One debt was successfully disputed.⁵ Two disputed debts total an insignificant \$120.

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

⁵¶ 20 (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant is ready to pay the one debt he admits when he receives an accounting for the amount claimed.

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, Applicant was forced to give up his business and his employment is now stable; so the circumstances that caused them are less likely to recur.⁶ Further, his financial problems were due to circumstances beyond his control, and he began addressing his delinquent debts once he obtained stable employment in April 2009. He has continued to address his other delinquent debts since then.⁷ While there is no evidence that Applicant has had any formal financial counseling, he has clearly acted to get his finances under control.⁸ The remaining debt is insignificant, and Applicant has demonstrated the willingness and ability to address his delinquent debts. Having addressed his other financial obligations, I am confident these remaining obligations will also be addressed if he receives satisfactory responses to his inquiries. Overall, substantial progress has been made addressing his delinquent debt.⁹

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.¹⁰ Applicant's efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-g:	For Applicant

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

⁷¶ 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;

⁸¶ 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;

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

¹⁰ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge