



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 XXXXXXX, Xxxxx) ISCR Case No. 14-02086
)
 Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

03/16/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 1 July 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 1 January 2015, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 5 February 2015.

¹Consisting of the File of Relevant Material (FORM), Items 1-7,

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 financial allegations. He is a 46-year-old engineering technician employed by a U.S. defense contractor since April 2006. He has held similar positions with other contractors since at least January 2002. He seeks to retain the clearance he has held since December 2001. Applicant married in April 2002, and separated from his wife in September 2010. It does not appear that either Applicant or his wife have filed for divorce.

The SOR alleges, Government exhibits (Items 5-6) substantiate, and Applicant admits 10 delinquent debts totaling about \$20,000. The debts include nine collection accounts and one charged-off debt. The single largest debt (SOR 1.f) is a joint debt, but the remainder are Applicant's individual responsibility. Four of those debts are each less than \$500.

Applicant's November 2013 clearance application (Item 4) reported no delinquent accounts, but noted that Applicant had hired an attorney to file a Chapter 7 bankruptcy. During a January 2015 subject interview with a Government investigator, Applicant revealed that he had hired the bankruptcy attorney in November 2010, and attributed his financial problems to his separation from his wife, claiming that he lacked the funds to address the debts by himself (Item 7). Applicant stated that he expected to file for bankruptcy protection in mid-2014. However, his November 2014 credit report (Item 6) reflects that Applicant's delinquent debts have grown, and he had not yet filed his bankruptcy petition. Nor did he submit a response to the FORM suggesting that he had filed his petition.

Applicant apparently has had no contact with his creditors since allowing the accounts to fall delinquent. His plan appears at all times since his separation to have been to file for bankruptcy protection. He has provided no explanation why the petition remains unfiled more than four years after he hired the bankruptcy attorney. Applicant has not received any financial or credit counseling. He provided no work or character references.

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, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties, which are ongoing, and seem unlikely to be resolved any time soon.⁴ Applicant's financial problems date to at least 2010 when he separated from his wife. There is no evidence that the separation was acrimonious, and no evidence of any efforts by Applicant to resolve the debts with his wife before letting the accounts fall delinquent. There is no evidence of any efforts by Applicant to resolve the debts with his creditors short of bankruptcy. Applicant has been fully employed since at least January 2002. However, he has taken no action on his debts, even the four small debts. Moreover, he has been contemplating bankruptcy relief since at least November 2010; yet he has taken no action to file for protection beyond hiring an attorney.

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; although the immediate causes of his problems may be unlikely to recur if he ever undertakes filing for divorce and bankruptcy protection.⁵ Applicant's 2010 separation was certainly beyond his control, but he has not been responsible in addressing his debt.⁶ Applicant has had no credit or financial counseling, and his debts are clearly not being resolved.⁷ There are no signs

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

⁶¶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;

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;

that Applicant has been in contact with any of his creditors, and thus he cannot establish that he has made a good-faith effort to address his debts.⁸ Moreover, Applicant has mostly disregarded these financial obligations since separating from his wife in September 2010. His documented inaction for more than four years raises significant security concerns that Applicant has not begun to address. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-j: 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

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