



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



In the matter of:)	
)	
XXXXXXXXXX, Xxxxxxxx Xxxxxx)	ISCR Case No. 14-02158
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Pro Se

01/12/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 15 October 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 4 March 2015, and I convened a hearing 21 April 2015. DOHA received the transcript (Tr.) 29 April 2015.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-C. AE C was timely received post hearing. The record in this case closed 12 May 2015, the day Department Counsel stated no objection to AE C.

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 allegations, except for SOR 1.c, 1.h, and 1.n-1.o. He is a 62-year-old systems and sensors technician employed as a defense contractor since October 2010. He seeks to retain the security clearance he renewed most recently in August 2010.

The SOR alleges, and Government exhibits (GE 1-6), establish nine delinquent debts totaling nearly \$84,000. Applicant admits four debts totaling over \$68,000. Nearly \$66,000 of that total is mortgage debt for a home that is in foreclosure (SOR 1.n). The remaining debts consist of a delinquent medical bill (SOR 1.c) that Applicant claims to have paid, a delinquent cell phone account (SOR 1.h) for a telephone Applicant claims was stolen, and library fines (SOR 1.o) for books his son checked out on Applicant's library card. Applicant reported several of the debts on his clearance application (GE 1), including several debts satisfied by garnishment. He also noted having bad finances for the last 36 years.

After careful review of the record, I conclude that SOR allegations 1.a-1.b and 1.i-1.m were paid before the SOR was issued. The judgment at SOR 1.a was obtained in January 2010 (GE 6), and the creditor obtained a garnishment order for the debt in August 2010 (Answer, Attachment B). Applicant's September 2014, September 2013, and October 2012 credit reports (GE 2, 3, and 4, respectively) all show that this judgment was satisfied in February 2012. The judgment at SOR 1.b was also obtained in January 2010 (GE 5), and the creditor also obtained a garnishment order for the debt in August 2010 (Answer, Attachment A). GE 2, 3, and 4 each show that this garnishment was satisfied in April 2011. An April 2015 letter (AE C) confirms that both judgments were satisfied over two years ago.

The automobile debt at SOR 1.i was reduced to a judgment for \$4,559.60 in July 2011,³ and the creditor obtained a garnishment order for the debt in August 2011 (Answer, Attachment D). GE 2-4 each show that his judgment was satisfied in November 2011, as do the relevant court records (AE C).

The four delinquent education loans, totaling \$42,⁴ alleged in SOR 1.j-1.m correspond to four loan disbursements made to Applicant in August 2000 and February 2001 (GE 2-4) totaling \$9,124.⁵ A single entry for the creditor (on a collection account

³Reported as \$4,526 on GE 2-4.

⁴Figures that exactly match the required monthly payments on the four loans in GE 2. The total monthly payments reported in GE 3 and 4 was \$74.

⁵The original disbursement amounts are each reported as the "high credit" entry on the credit reports. None of the account numbers are sufficiently listed to differentiate between the four disbursements.

with a zero balance (GE 2-4) reports a “high credit” of \$9,900.⁶ The creditor obtained a garnishment order on a “credit agency tracking number” that corresponds to the account number on the credit reports, for \$6,942.28 in July 2011 (Answer, Attachment C). An April 2015 letter from the creditor (AE C)—unfortunately only using an account number and not the tracking number—confirmed that Applicant had paid his defaulted loans in full.⁷ Given that the \$42 balance reported on the September 2014 credit report were based on creditor inputs in July 2014, and the SOR was issued in October 2014, I infer that the garnishment was completed by the time the SOR was issued.

In addition to these seven accounts paid by garnishment before the SOR was issued, Applicant’s credit report shows other paid judgments or paid collection accounts that were not alleged in the SOR. Similarly, the documents Applicant submitted with his Answer show a state tax lien entered in September 2010 for tax year 2007 that is not specifically at issue. Nevertheless, these accounts provide relevant background for the remaining SOR debts.

Applicant claimed, without corroboration, to have paid the medical bill at SOR 1.c. Applicant paid his delinquent cable bill (SOR 1.d) in April 2015, after the hearing (AE C). He also paid his library fines (SOR 1.o) in April 2015, after the hearing (AE C). He has not made any efforts to pay the medical bills at SOR 1.e-1.g. These medical bills are for his estranged wife, who he kept on his medical insurance. He has not made any effort to satisfy his delinquent cell phone bill (SOR 1.h).⁸ He has not had any contact with the creditor for the deficiency on his foreclosed house (SOR 1.n).

Applicant attributed these delinquent debts to the difficult circumstances of his separation from his second wife, and the financial assistance he has provided to his adult children (AE A, B). However, Applicant acknowledged that his finances have been in disarray for quite some time (Tr. 33). Moreover, Applicant has been mostly indifferent to his financial situation. His daughters prepared an outline of a plan AE B) for Applicant to eliminate his debt (Tr. 64), but Applicant has not acted on it.

Applicant has not received any financial or credit counseling. In his post-hearing submission (AE C), he stated his intent to hire a financial advisor to deal with the mortgage issue and find out how to pay the medical debts. He also pledged to contact the cell phone provider and pay the debt or make payment arrangements. He also documented an upcoming appointment with a financial advisor in May 2015. Applicant

⁶This figure is typically the maximum amount authorized for any one student. This account originated in August 2000, which corresponds to the first disbursement dates.

⁷Limited to those loans paid to the agency listed on the garnishment.

⁸Applicant claims he payed for the telephone, but entered into a two-year contract for service. When the telephone was stolen, Applicant claims that he contacted the provider, who would not provide him another telephone as it was not insured. The delinquent amount includes the cost of the unpaid contract (Tr. 49). Applicant got another telephone with a different provider. He admitted that he signed a contract with the alleged provider and then did not pay (Tr. 70).

did not provide any work or character references, or evidence of community involvement.

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.⁹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has delinquent debt dating back to at least 2009 that he has not addressed.¹⁰

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, and the stated cause cannot be considered unlikely to recur because his financial problems seem more related to his being financially unsophisticated and being unwilling to focus on his finances.¹¹ His

⁹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

difficult separation from his second wife can be considered a circumstance beyond his control, but his disinterest in his finances cannot be. Nor can his financial assistance to his adult children. Moreover, Applicant has not been responsible in dealing with his debts. He was apparently content to let several acknowledged creditors satisfy their debts through garnishment, rather than make payment arrangements for the debts.¹² He has had no contact with any of his creditors for several years. His belated efforts to address some of the debts after the hearing does not constitute a good-faith effort to resolve his debts. Neither does payment of debts through garnishment.¹³

In addition, Applicant has received no credit or financial counseling. He has no budget. Consequently, it is clear that the problem is not being resolved.¹⁴ Although Applicant may have finally recognized that he needs some professional advice to make progress on his unresolved debt, that effort has only just begun. Further, Applicant provided no character or employment evidence to reasonably support a “whole person” analysis in favor of granting his clearance. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b, i-m:	For Applicant
Subparagraphs c-h, n-o:	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

¹²¶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;

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

¹⁴¶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;