



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



In the matter of:)	
)	
XXXXX, Xxxxx Xxxxxx)	ISCR Case No. 14-02420
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

08/31/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 4 September 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 21 July 2015, when Department Counsel waived objection to Applicant's response to the FORM. DOHA assigned the case to me 4 August 2015.

¹Consisting of the File of Relevant Material (FORM), Items 1-7, and Applicant's Response to the FORM.

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, except for SOR 1.a. He is a 44-year-old project leader employed by a U.S. defense contractor since January 2007. He has not previously held a clearance. He has been continuously employed, full time, since at least April 1996.

The SOR alleges and Government exhibits (Items 2-7) substantiate, three delinquent debts totaling almost \$14,000. Applicant admits two delinquent debts totaling over \$9,000. Applicant's January 2015 credit report (Item 4) shows that SOR debt 1.a was paid in June 2014.³ Applicant entered a repayment plan on SOR debt 1.b in February 2014, to begin paying \$100 monthly. Applicant's Response to the FORM documented monthly payments from February 2014 to May 2015.⁴ The creditor for SOR debt 1.c would not offer Applicant a repayment plan, insisting on a lump-sum payment of at least half of the remaining balance. Applicant is saving to make the required payment.

Applicant's finances took a turn for the worse around spring 2009, when his children by his first marriage went to live with their mother. Applicant's custodial arrangement with his ex-wife was such that sometimes the children lived with her and sometimes they lived with him. He paid her child support when the children lived with her and she paid him child support when the children lived with him. At the time the children decided to go live with their mother again, Applicant was receiving about \$1,500 per month child support.

In October 2009, anticipating that the loss of child support would tighten his budget, Applicant engaged a debt resolution service. He enrolled seven accounts in the service. He chose this course of action after considering other options, because he thought it offered the quickest resolution. Unfortunately, he took the company's advice and stopped paying on the accounts, ostensibly to make it easier for the company to negotiate a settlement with the creditors. Applicant estimates he paid the company about \$4,500 for its services.

Applicant expected to resolve the seven debts by October 2011. Between October 2009 and April 2010, Applicant resolved three of the debts (not alleged in the SOR). His settlement efforts stopped for a time in April 2010 because both his vehicles broke down, and he had over \$10,000 in repair bills. From April 2010 until fall 2012, Applicant was trying to replenish his savings, because the company would only make

³Applicant's February 2013 credit report (Item 6) shows this account with a balance of \$7,050. By the time of his March 2014 credit report (Item 5), the amount had been reduced to \$4,460—the amount alleged in the SOR.

⁴This account had a delinquent balance of \$4,631 on Applicant's February 2013 credit report (Item 6), which had grown to \$4,675 (the amount alleged in the SOR) by his March 2014 credit report (Item 5). However, Applicant's February 2015 credit report (Item 4) shows that the payments have been made, reducing the outstanding balance to \$3,675.

settlement offers to the creditors when Applicant was able to make significant lump-sum payments.

In fall 2012, Applicant decided to deal directly with the collection agents for his remaining debts. He reached a repayment agreement with the creditor for SOR debt 1.a to pay \$200 monthly. He consistently made those payments until he missed a month in February 2013 because his wife lost her job (Item 7).⁵ He later resumed payments on the account.

Applicant's Response to the FORM presented a budget that shows over \$500 monthly available to address his past due debts. This money is separate from the \$100 monthly he pays on SOR debt 1.b. Except as noted above, Applicant does not appear to have received any credit or financial counseling. He presented no work or character references or any evidence of community involvement. His credit reports reflect a number of accounts (not alleged in the SOR) that had been delinquent in the past, but which had been brought current.

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.

⁵Applicant's Response to the FORM, while submitted to document Applicant's agreed payments on SOR debt 1.b, also documents several of the final payments on SOR debt 1.a—January through April 2014.

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.⁶

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Acting on bad advice given to him by the debt resolution service he hired in October 2009, Applicant had a number of accounts fall delinquent.⁷ However, only three of those accounts remained delinquent at the time the SOR was issued, based on the information available to the Government in Applicant’s March 2014 credit report (Item 5). Yet, Applicant’s evidence and his other credit reports document that he had been making payments on SOR debt 1.a for some time before the SOR was issued,⁸ and continued to make payments until the account was paid in June 2014 (Item 5). Similarly, Applicant began making payments on SOR debt 1.b. in February 2014 (Response), payments which continue and for which future payments have been budgeted. It only remains for Applicant to save for the lump-sum payment required by the creditor at SOR debt 1.c.

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, Applicant’s loss of child support was a one-time event for the foreseeable future; so the circumstances that caused them are unlikely to recur.⁹ Further, his financial problems were due to circumstances beyond his control, and he actually began addressing his not-yet-delinquent debts once he recognized the effect losing the child support would have on his finances. His choice for addressing his debts was not a particularly wise one in retrospect. Yet, he has continued to address his other delinquent debts since then.¹⁰ While there is no evidence that Applicant has had any formal financial counseling, he has clearly acted to get his finances under control.¹¹ The remaining debt is insignificant. He has demonstrated the willingness and ability to address his delinquent debts. Having addressed his other financial obligations, I am confident this remaining obligation will

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷¶ 19 (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

⁸Based on the changes in balance due between the February 2013 credit report (Item 6) and the March 2014 credit report (Item 5).

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

¹⁰¶ 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;

¹¹¶ 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;

also be addressed in turn. Overall, essentially complete progress has been made addressing his delinquent debt.¹²

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.¹³ 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-c:	For Applicant

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

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

¹³ISCR Case No. 07-06482 (App. Bd. 21 May 2008).