



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



In the matter of:)	
)	
XXXXXXXX, Xxxxxx Xxxxxxx)	ISCR Case No. 14-05779
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
Alison O'Connell, Esquire, Department
For Applicant: *Pro se*

01/27/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 13 April 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 1 July 2015, and I convened a hearing 19 August 2015. DOHA received the transcript 27 August 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibit (HE) I and Applicant exhibits (AE) A-I. AE H-I were timely received post hearing. The record in this case closed 8 September 2015, the day Department Counsel indicated no objection to Applicant's post-hearing submissions.

²The DoD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 32-year-old records manager employed by a defense contractor since February 2015.³ She was most recently granted a clearance in May 2008. She is unmarried, and has no children.

Applicant has largely been employed full time from August 2004 until present, but she experienced four significant periods of unemployment during that time. She was unemployed for about nine months from November 2006 to July 2007. She was unemployed for six months from May to October 2009. She was unemployed for five months from May to September 2012. Finally, she was most recently unemployed for 11 months, from April 2014 to February 2015. She received unemployment benefits as well as support from her mother during her periods of unemployment, but the money was not enough to stay current with her bills beyond her basic necessities (Tr. 57).

In her March 2013 clearance application (GE 1), Applicant answered “no” to a series of questions designed to elicit any unfavorable financial circumstances. Applicant falsely claimed that she had no delinquent Federal debt (SOR 2.a),⁴ no repossessions or foreclosures (SOR 2.b),⁵ no collection accounts (SOR 2.c),⁶ and no suspended credit card accounts (SOR 2.d).⁷ Although she denied any intent to mislead the Government (Tr. 53-54), she acknowledged that the answers to these questions had to be “yes” (Tr. 57-60).⁸

The SOR also alleges, Government exhibits confirm, and Applicant admits 20 delinquent debts totaling nearly \$38,000. Nearly \$25,000 of that figure is for delinquent education loans. However, record evidence suggests that the education loans at SOR 1.e-1.g are the original three disbursements of the education loan alleged at SOR 1.i.

³Her clearance was originally sponsored by another defense contractor in March 2013 (GE 1). That sponsor employed her in a similar position from September 2012 to April 2014 (Tr. 31). Her current position is in jeopardy as her company awaits funding for the coming fiscal year (Tr. 32, 44).

⁴**Section 26:** You are currently delinquent on any Federal debt?

⁵**Section 26: In the past seven (7) years,** you had any possessions or property *voluntarily* or involuntarily repossessed or foreclosed?

⁶**Section 26: In the past seven (7) years,** you had bills or debts turned over to a collection agency?

⁷**Section 26: In the past seven (7) years,** you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?

⁸She offered a variety explanations that were not credible: she first claimed that she did not know her education loans were federal loans (Tr. 49), then acknowledged that she signed the master agreement which shows that the loans are Government backed (Tr. 60-61). She claims she “maybe” overlooked the word “voluntarily” in the repossession question (Tr. 49), but offered no reason she would have answered the question “no.” Similarly, she offered no reason she would have answered “no” to the question about collection accounts (Tr. 50).

Consequently, the amount of education debt at issue is about \$15,000.⁹ The week before the hearing, Applicant reached a repayment agreement with the Government lender (AE C) to pay \$200 monthly for 12 months beginning in late August 2015 (Tr. 36, 55-56). She expected to renew the agreement every six months for another six months (Tr. 37). AE C does not reflect a total balance due, merely the payment schedule.

SOR debts 1.b, 1.d, 1.h-1.i, 1.p and 1.r date to Applicant's January 2008 credit report (GE 3). Applicant discussed delinquent debts with a Government investigator when she was interviewed in 2008 (Tr. 58).¹⁰ Applicant's exhibits document incomplete and largely untimely efforts to resolve some of her debts. AE B shows that Applicant paid a medical bill not alleged in the SOR in August 2015, just days before the hearing. AE D shows a single \$52 payment made on SOR debt 1.t the same day. In September 2015, Applicant reported she was awaiting an updated balance from the creditor (AE H). AE H also shows that Applicant settled SOR debt 1.a for a 46% discount, on 21 March 2015. In August 2011, Applicant had some text discussions about resolving SOR debts 1.m and 1.q-1.s (AE H), but nothing came of those discussions. AE I shows that SOR debt 1.c has been paid, but does not indicate the date it was paid.

Except as noted, Applicant has made no efforts to resolve her SOR debt, some of which has aged-off her credit reports, making it more difficult to locate the creditors. However, the older credit reports contain contact information for the creditors.

Applicant's financial problems are attributable to her frequent and significant periods of unemployment since November 2006. However, Applicant has not documented any efforts to communicate with her creditors during those periods or after becoming re-employed.

Applicant's family, friends, and coworkers consider her honest and trustworthy, and recommend her for a clearance (AE E), notwithstanding her financial problems. However, she has not documented any financial or credit counseling. She did not provide either a financial statement or a budget.

⁹SOR debt 1.i first appears in Applicant's November 2008 credit report (GE 3), when an education loan with an original high credit of \$14,968 was reported by Experian and Equifax to be 120 days past due in the amount of \$549, on a balance of \$12,073. By her April 2013 credit report (GE 4), SOR debt 1.i shows a zero balance on a loan with a high credit of \$14,968. GE 4 also shows three numbered education loans with high credit as alleged in SOR 1.e, 1.f, and 1.g, each 90 days past due in varying amounts on balances that have grown from the high credit amounts alleged in the SOR—\$10,904 balance combined. Each of the three SOR debts also appears in GE 4, reported by the Government guarantor of the loans. The guarantor reports these debts as now in collection, with balances and past-due amounts totaling \$11,871 combined. Applicant's September 2014 credit report (GE 5) reports the three debts as having been assigned to the Government, reporting only the high credit figures with no balances or past-due amounts.

¹⁰She told the investigator that she was trying to pay her delinquent debts, but had fallen behind because of her frequent unemployment (Tr. 58-59).

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 guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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, 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.¹¹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's debts go back as far as her last periodic reinvestigation in 2008. However, despite assurances to the Government investigator, debts from that investigation remain outstanding, in addition to acquiring many new ones.¹²

The mitigating factors for financial considerations offer Applicant only partial relief. Her financial difficulties are both recent and multiple, and occurred under circumstances that are likely to recur.¹³ The nature of her employment is such that

¹¹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

another layoff is likely. She was facing such a prospect at the time of the hearing. Applicant's periods of unemployment certainly constitute circumstances beyond her control, yet she cannot be considered to have acted responsibly in addressing her debts.¹⁴ I am not necessarily expecting significant progress in the approximately six months since she became re-employed in February 2016. Nevertheless, Applicant has documented very little in the way of efforts to resolve her debts since she acquired the debts. She has not documented any efforts she may have made during her previous unemployments, or subsequent re-employments. She does not appear to have a concrete plan for addressing her debts. She has received no credit or financial counseling; nor has she demonstrated that her financial problems are under control, or that she has a plan to bring them under control.¹⁵ Her repayment of SOR debt 1.a. barely qualifies as a good-faith effort to satisfy that debt, but she has documented an undated payment on SOR debt 1.c and a single post-SOR payment on SOR debt 1.t. the other debts remain completely unaddressed.¹⁶ Accordingly, I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicants are expected to give full and frank answers during the clearance process. Although an Applicant might be excused for not having an encyclopedic memory of all debts at the time of the clearance application (in the absence of a credit report), an Applicant must at least disclose in general the fact of financial problems or a partial description of outstanding debts. In this case, Applicant knew at the time of her clearance that she had outstanding debts, yet she failed to disclose that fact. I find her explanations for failing to do so unconvincing. Her failure to disclose even the general fact of having financial problems constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹⁷

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information until her subject interview.¹⁸ Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before

¹⁴¶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;

¹⁵¶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;

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

¹⁷¶16(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

¹⁸¶17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about herself provides some indication of her willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests she is willing to put her personal needs ahead of legitimate Government interests. Accordingly, I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a, e-g:	For Applicant
Subparagraphs b-c, h-t:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-d:	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