



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



In the matter of:)	
)	
)	ISCR Case No. 06-24093
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

June 26, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 25 February 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.¹ Applicant answered the SOR 13 March 2008, and requested a hearing. DOHA assigned the case to me 9 May 2008, and I convened a hearing 12 June 2008. DOHA received the transcript (Tr.) 23 June 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 47-year-old facility specialist employed by a defense contractor since February 2004. He seeks to retain the security clearance he has held since September 1989.

The SOR alleges, government exhibits substantiate, and Applicant admits, 12 delinquent debts totaling nearly \$37,000. Over \$34,000 of the debt is for unpaid taxes to the IRS (tax years 2001, 2002, 2003, and 2004) and his home state. He may owe the IRS an additional \$5,000 for tax years 2005, 2006, and 2007. Of the remaining \$2,900, Applicant claims—without corroboration—to have paid or settled seven debts for \$1,800 in March 2008, as he answered the SOR.

Applicant attributes his tax difficulties to using the standard deduction when itemizing his deductions would have lowered his tax liability. In addition, he did not ensure that his income tax withholding was adequate to cover his tax liability. Finally, on a larger level, he acknowledges a history of financial mismanagement, procrastination, and irresponsibility.

Applicant was aware of his financial delinquencies before his subject interview in November 2000, but took no action to address them. In response to the SOR, Applicant claimed to have paid or settled seven debts, but produced no documentation to support his claim. Finally, in about May 2008, he began to work with his accountant to file amended returns using itemized deductions to reduce his tax liability. However, no returns have been filed as yet, and it is unclear how much debt remains to be paid even with the benefit of itemized deductions.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, 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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access

to classified information. Applicant must then 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.²

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's credit reports establish his indebtedness. Applicant was aware of the alleged debts since at least November 2007, yet he took no effective action to address the debts before the SOR was issued.³ The only action taken by Applicant after the SOR was issued was to hire a law firm to dispute the debts. That effort may bear fruit, but not in time to be much help to Applicant in this case.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁴ The debts were not due to circumstances beyond his control and he has not acted responsibly in addressing his debts.⁵ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁶ At best, only a small portion of the debts have been paid, and those were not paid in a timely, good-faith effort.⁷ Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . .

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

⁵¶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;

⁶¶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;

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

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	Against Applicant
Subparagraph g:	Against Applicant
Subparagraph h:	Against Applicant
Subparagraph i:	Against Applicant
Subparagraph j:	Against Applicant
Subparagraph k:	Against Applicant
Subparagraph l:	Against Applicant

Conclusion

In light of all 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