



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



In the matter of:)	
)	
XXXXXXX, Xxxx XXXXXXXX)	ISCR Case No. 07-04838
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connor, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 24 September 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, E, and J.¹ Applicant answered the SOR 24 October 2008, and requested a decision without hearing. DOHA assigned the case to me 11 June 2009. The record in this case closed 21 May 2009, the day Applicant's response to the government's File of Relevant Material (FORM) was due.

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 financial allegations, and a January 2007 domestic dispute (SOR 3.a.). He denied the falsification allegations. He is a 51-year-old electronic maintenance technician employed by a defense contractor since July 2004. He appears of have held a clearance while in the U.S. Army 1975-1995.

The SOR alleges, Applicant admits, and government exhibits substantiate, ten delinquent debts totaling over \$28,000. Five of the debts are medical debts totaling less than \$750. He claimed, without corroboration to have paid two medical debts totaling \$52 in October 2008, and to be paying two more totaling \$128 in November 2008. He has not contacted any of the remaining creditors.

Applicant attributes his financial problems to his separation and divorce in 2000, and being unemployed from February 2001 to July 2004. He provided no explanation why he was not able to find any employment between 2001 and 2004.

When Applicant applied for a security clearance in July 2006 (Item 4), he answered "no" to two questions (28.a. and b.) eliciting any recent financial delinquencies. However, he stated in the remarks section: "I'm not too sure of my current credit status. During the period of 2001 to July 2004 I was unemployed, and used up all of my financial resources. I couldn't pay any of my creditors and as a result, my credit ratings were extremely poor."

Since becoming employed full-time in July 2004, Applicant has paid three delinquent medical bills (not alleged) totaling about \$300. He looked into debt consolidation, but took no action because he could not afford the monthly payment or administrative fees. His financial statement reflects positive monthly cash flow of \$134.

In January 2007, Applicant got into a verbal altercation with a person who was harboring his runaway step-daughter. Because he was alleged to have brandished a baseball bat during the dispute, he was arrested for "terroristic threat." The prosecutor declined prosecution and the charges were dismissed.

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 guidelines are Guidelines

F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal 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 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. While Applicant's financial difficulties are reasonably attributable to his divorce in 2000 and his loss of employment in 2001, he has been unwilling to take effective action to address his debts despite being employed full time since July 2004.³

Applicant meets only one of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁴ While his separation and unemployment are clear circumstances beyond his control, he got a new job in July 2004, and he has not acted responsibly in addressing his debts since then.⁵ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁶ There is very little evidence, and no corroboration, of a good-faith effort to

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

³¶ 19.(a) inability or unwillingness to satisfy debts; (b) . . . 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;

satisfy his debts.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.

The government did not establish a case for disqualification under Guidelines E and J. Department Counsel acknowledged in the FORM that Applicant's general disclosure that he used up all his financial assets and stopped paying his creditors when he was unemployed was adequate disclosure of the delinquencies for which he lacked specifics. Both the circumstances and the disposition of the threat case suggest it lacks security significance. I resolve Guidelines E and J for Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

 Subparagraph a- j: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

 Subparagraph a-b: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

 Subparagraph a-b: For 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

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