



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-13828
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

July 31, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 24 March 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 15 May 2008, and requested a hearing. DOHA assigned the case to me 2 June 2008, and I convened a hearing 17 July 2008. DOHA received the transcript (Tr.) 25 July 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 except for SOR 1.b., 1.d., and 1.e. She is a 37-year-old principal specialist employed by a defense contractor since April 2007, seeking access to classified information. She previously held a clearance in the mid-1990s.

The SOR alleges, and government exhibits substantiate, 6 delinquent debts totaling nearly \$21,000. Applicant admits three debts totaling nearly \$12,000. The remaining \$9,000 delinquent debt was for unpaid child support (\$3,000) and defaulted student loans (\$6,000).

The debt at SOR 1.a. arose around June 2007, when Applicant's two children (ages 14 and 18), incurred text messaging charges on their cellular telephones that Applicant was unable to pay. Applicant's older sister paid a proffered settlement amount as a gift to Applicant (Tr. 32, A.E. A). The children are now on a pre-paid cellular plan.

The debt at SOR 1.b. arose in early 2007. Applicant's two children resided with their father until June 2007. Applicant was obligated to pay child support, which she paid directly to her ex-husband. When her ex-husband filed for child support through the state court system, Applicant was unable to document those payments to the state's satisfaction and she was required to pay through the state court. Applicant satisfied this debt in March 2007, with a gift from her mother of half the amount owed (Tr. 36-41, A.E. A).

The debt at SOR 1.c. arose in May 2005, when Applicant moved from one state to another nearby. Applicant thought her land line provider just switched the billing address from one state to the other on the same account, when the provider closed the first account and opened a new account at the new address. Applicant never received the final bill from the closed account. She paid this bill in July 2007 (Tr. 42-46, A.E. A).

The debts at SOR 1.d. and 1.e. are for student loans Applicant took out while attending community college from 1998 to 2000. Repayment on the loan was to have started in 2002, but Applicant obtained a forbearance to 2003 because she was unable to make the required payments. However, she was still unable to make the payments once the forbearance expired, and she defaulted on the loans. She took no action with the creditor until April 2007, when her Federal income tax refund for 2006 was seized and applied to the outstanding balance. Applicant was then placed in a rehabilitation repayment plan for six months, during which time her payments were deducted automatically from her paycheck. She has now resumed regular payments and is current on her educational loans (Tr. 48-54, 68-69, A.E. A).

The debt at SOR 1.f. is for an automobile repossession in June 2007. Applicant co-signed the loan for her then fiancé, and thought he was paying the loan through his personal checking account. The first time she knew that he was paying not was when the vehicle was repossessed. She has contacted the creditor to establish a repayment

plan, but the creditor is demanding a cash down-payment that is beyond her means. She has offered to pay \$100 per month. At present, the creditor is pursuing legal recourse against the ex-fiancé (Tr. 54-58, A.E. A).

Applicant currently lives within her means and does not have any delinquent accounts. She attributes her financial difficulties to lower paying employment before she obtained her current job in April 2007. She now makes \$73,000 per year. She previously made \$35,000 per year. Applicant's work and character references (A.E. B) consider her honest and reliable.

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 has a history of financial

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

difficulties dating to at least 2003.³ Although Applicant has taken steps to address most of her debts, the largest single debt—the joint automobile loan—has not been addressed. While she is on firmer financial footing today, she has not reached a stage where her goal of financial stability seems likely.

The mitigating factors for financial considerations provide mixed help to Applicant. Her financial difficulties are both recent and multiple.⁴ Except for the education loans and the land line bill, the debts arose after she obtained her better paying job in April 2007. The land line bill (1.c.) seems largely an issue of miscommunication or oversight, and can be mitigated. The child support debt (1.b.) and the automobile repossession (1.f.) were largely due to circumstances beyond her control—setting aside the judgment issues of co-signing the car loan and not keeping better records of her child support payments. There is a similar judgment issue in not insuring her teenage children understood the limits of the cell phone plan (1.a.). For the most part she has acted responsibly overall in addressing these three debts, although the car loan remains unresolved.⁵ However, I am concerned that the two paid debts were resolved by outright gifts from family members. Beyond that, she was outright irresponsible in dealing with her educational loans, taking action only when her income tax refund was seized. There is no evidence that Applicant has undertaken financial counseling. She has not demonstrated that the problem has been brought substantially under control.⁶ Except for the education loans, the debts that have been paid were arguably paid in a timely, good-faith effort.⁷ She appears now to have the means to get and keep her financial house in order. Nevertheless, the best case view of Applicant's circumstances is that it is still too early to tell whether her goal of financial stability will be achieved. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant
Subparagraph c:	For Applicant
Subparagraph d:	Against Applicant

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

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.

Subparagraph e: Against Applicant
Subparagraph f: 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