



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-16565
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro se*

July 29, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 7 April 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and J.¹ Applicant answered the SOR 3 May 2008, and requested a hearing. DOHA assigned the case to me 28 May 2008, and I convened a hearing 14 July 2008. DOHA received the transcript (Tr.) 21 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.a and 1.j. She is a 26-year-old human resources assistant employed by a defense contractor since February 2006. She has not previously held a clearance.

The SOR alleges, and government exhibits substantiate, 16 delinquent debts totaling over \$15,000. Applicant admits 14 debts totaling nearly \$12,000. Nine of the debts are for unpaid medical expenses totaling nearly \$4,200. Another nine debts were \$500 or less, three being less than \$100. Applicant asserts, and record evidence confirms, that the \$445 debt at SOR 1.j. belongs to her husband—she being only an authorized user on the account. Record evidence also establishes that the judgment alleged at SOR 1.a. was satisfied in April 2008 (A.E. A), and the debts at SOR 1.c. and 1.d. were paid in July 2008 (A.E. B, C). Applicant's finances were so tight that on at least two different occasions between December 2004 and March 2005, she used counterfeit currency (that she knew to be counterfeit) to pay road tolls. She was ultimately arrested and fined for this offense.

In the two weeks before the hearing, Applicant contacted an on-line credit counseling organization that proposed a repayment schedule for her 12 remaining debts (approximately \$11,700) that would have them paid by May 2013 (A.E. D, E). However, she had not yet begun payments, nor did she demonstrate that her creditors had accepted the proposed repayment schedule.

Applicant attributes her financial difficulties to chronic medical problems that she had when not covered by health insurance, and related brief periods of unemployment from December 2005 to February 2006, December 2004 to July 2005, and May to September 2004. Her current job provides health coverage, and she underwent corrective surgery for her chronic condition in August 2007. Applicant's work and character references (A.E. F) 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 guidelines are Guideline F (Financial Considerations) 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. Applicant has a lengthy history of financial difficulties, which is ongoing.³ Although Applicant appears to be taking tentative steps to address her debts, she has not reached a stage where her ultimate success seems likely.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁴ Even if I accept that the debts are largely due to her medical issues, and thus due to circumstances beyond her control, she has not acted responsibly overall in addressing her debts.⁵ Even though several of the debts were relatively small, she took no steps to address any of them until she received the SOR. Her evidence that she has sought credit counseling demonstrates only a start toward financial stability. She has not otherwise brought the problem under control.⁶ The few debts paid have been paid only recently, not in a timely, good-faith

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;

effort.⁷ 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.

At hearing, Department Counsel took the position that the passage of time since Applicant's use of counterfeit currency was sufficient to mitigate the security concerns raised under criminal conduct. The gravamen of that conduct was the Applicant's financial straits at the time of the crime. I conclude Guideline J for Applicant.

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: For Applicant
Subparagraph k: Against Applicant
Subparagraph l: Against Applicant
Subparagraph m: Against Applicant
Subparagraph n: Against Applicant
Subparagraph o: Against Applicant
Subparagraph p: Against Applicant
Subparagraph q: Against Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph a: For Applicant

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

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