



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-005048
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

May 29, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 17 October 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 5 November 2008, and requested a decision without hearing. DOHA assigned the case to me 15 May 2009. The record in this case closed 17 April 2009, the day Applicant’s response to the government’s File of Relevant Material (FORM) was due. Applicant provided no additional information for evaluation.

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. He is a 44-year-old shipper employed by a U.S. defense contractor since August 2001. He has not previously held a clearance.

The SOR alleges, Applicant admits, and government exhibits substantiate, four delinquent debts totaling over \$15,000. Applicant accrued these debts after filing for chapter 7 bankruptcy protection in May 1997, and receiving a discharge of his dischargeable debts—over \$20,000—in August 1997.

In a January 2008 subject interview (Item 7), Applicant acknowledged that he was in a very bad financial position, living week to week. He admitted that he has a history of not meeting his financial and credit obligations. He attributed his financial problems to his mismanagement and neglect of his finances. He admitted that he had not sought any financial counseling and had made no efforts to address his delinquent debts.

That said, there were more immediate precipitants of his financial problems. For example, Applicant and his common-law wife of several years separated for a time in 1996, which left Applicant responsible for all the bills. When he was unable to keep up with the payments, he filed for bankruptcy protection in May 1997. He moved to another state with his wife and rebuilt his credit. However, in 2001, his wife's ex-husband lost his job, which meant she was no longer receiving the child support he was obligated to send to her. Although she works part time, that income provides little of the family resources and the loss the child support payments again put stress on the family budget.

Applicant claims, without corroboration, to have made some sporadic payments to some of his creditors, but nothing resembling a systematic effort to pay. One of the creditors charged off his debt to profit and loss, so Applicant feels no obligation to repay that creditor. Despite a personal financial statement that shows positive monthly cash flow of over \$700, Applicant states he lacks the means to repay his creditors.

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 an extensive history of financial difficulties, which are ongoing.³ He received a complete discharge of his dischargeable debt in August 1997, yet he has continued to accrue delinquent debt.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁴ The debts were more due to his financial mismanagement than due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.⁵ He has not sought credit counseling, and he has not otherwise brought the problem under control.⁶ None of the debts have been paid, much less in a timely, good-faith effort.⁷ Further, given that he has not sought or used effective financial counseling, there is nothing in the record to suggest that

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

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

Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a-e: 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