



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



In the matter of:)	
)	
)	ISCR Case No. 08-06895
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

July 29, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 11 March 2009, 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 2 May 2009, and requested a hearing. DOHA assigned the case to me 29 May 2009, and I convened a hearing 9 July 2009. DOHA received the transcript (Tr.) 17 July 2009.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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.f.—a debt he claimed, without corroboration, to have paid in April 2009 after receiving the SOR.² He is a 27-year-old network field engineer employed by a defense contractor since March 2006. He previously served in the U.S. Air Force, achieving the rank of Staff Sergeant (pay-grade E-5). He seeks to retain the clearance he transferred from the Air Force to his contract employment.

The SOR alleges, and government exhibits (GE 4, 5) confirm, seven delinquent debts totaling nearly \$24,000. Applicant denies only one debt, for \$275. Applicant reported delinquent debts on his November 2007 clearance application (GE 1), confirmed many of them during an interview with a government investigator in December 2007 (GE 3), and disclosed that he had taken no action to address any of the debts in response to DOHA interrogatories in October 2008 (GE 2).

Applicant's financial difficulties are entirely attributable to his financial irresponsibility. While in the Air Force he would open credit accounts—sometimes only to get the company discount for opening an account—pay on them for a time, then stop making payments when something else came along that he wanted. There were no outside occurrences that contributed to his financial problems. Eventually, however, he was unable to keep up with all his accounts. He made other choices that contributed to his cash flow problems as well. As an enlisted member of the Air Force, he received a clothing allowance for his uniforms, and was eligible to live in government quarters and eat in government dining facilities. In these circumstances, most of his pay was available for purely personal expenses. He chose to forego these benefits and take the housing and subsistence allowances provided by the government in lieu of messing and berthing—allowances well known to be inadequate to cover the additional expenses of living in the region where Applicant was stationed.

After Applicant responded to DOHA interrogatories in October 2008, he contacted some of his creditors, but took no action to actually resolve his debts until after he received the SOR. Asked why he waited so long to contact his creditors, Applicant responded (Tr 35): “You could say it was procrastination. I’m still quite irresponsible.” Later asked why he made no payments to his creditors despite showing positive monthly cash flow of \$580 in October 2008, he replied:

It's a good question. I don't have a great answer for it . . . I still like to do fun things and go out, still be irresponsible, so I could have been saving money and probably paying off these debts a lot sooner, but I didn't. [Tr 45]

²He also claimed, without corroboration, to have paid the debt at SOR 1.g. in April 2009, also after he received the SOR.

Although Applicant received dunning notices from his creditors, that did not motivate him to address his debts. He planned simply to ignore his creditors (Tr 50). At hearing, he claimed to have paid the debt at SOR 1.d., but provided no corroboration. In April 2009, (AE C, D) he established a payment program with a third-party credit firm to address the debts at SOR 1.b., 1.c., and 1.e. The program obligates Applicant to pay about \$465 per month for 36 months to resolve those debts. However, for the first 18 months of the program, administrative and maintenance fees consume more than half his payment, leaving only about \$223 for actual debt reduction. In mid-April 2009, he started a direct debit from his checking account to make the required monthly payments, but provided no documentation that he has actually made the payments. He has a budget (AE B) that shows he has the means to make the program payments. He is still in negotiations with the creditor at SOR 1.a. about a repayment program. The creditor wants a lump-sum payment

Applicant's character and employment references consider him honest and trustworthy, and recommend him for his clearance. They are all aware of his financial problems. It is not clear whether they are aware of his financial irresponsibility.

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.³

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. He got heavily into debt through irresponsible living. He dealt irresponsibly with his creditors, ultimately intending not to pay the amounts owed. Although he entered into a repayment program with a third-party, and claimed without corroboration to have paid three small debts, he only acted once his clearance was at risk. Further, his continuing lackadaisical attitude toward his finances is demonstrated by selecting a credit adjustment firm that consumes more than half of his monthly payment in fees during the first 18 months of the program.⁴

The mitigating factors for financial considerations offer Applicant little solace. His financial difficulties are both recent and multiple.⁵ The debts were not due to circumstances beyond his control and he did not act responsibly in addressing his debts.⁶ Had he acted responsibly in acquiring debt, he always had the means to pay his creditors until he opened more accounts than he could keep current. Beyond the expensive repayment program he entered, he has not sought credit counseling, and while the program will otherwise bring the greatest portion of the problem under control in 36 months,⁷ that is not the real issue here. Applicant’s dealings with his creditors is the antithesis of timeliness and good-faith.⁸ His entire course of conduct is rife with the kind of irresponsibility that makes him a poor risk for access to classified information. I conclude Guideline F against Applicant. Whole person analysis yields no different result.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a-g: Against Applicant

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; . . .

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

⁶¶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;

⁷¶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;

⁸¶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