



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



In the matter of:)	
)	
XXXXXXXX, Xxxxx XXXXXXXXX)	ISCR Case No. 08-07584
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

July 8, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 15 January 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.¹ On 17 February 2009, Applicant answered the SOR, and requested a hearing. DOHA assigned the case to me 16 March 2009, and I convened a hearing 19 May 2009.² DOHA received the transcript (Tr.) 19 May 2009.

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.

²Applicant had agreed to the hearing date in a telephone conversation with Department Counsel more than 15 days before the hearing (Tr. 12-13).

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.b.–1.j., 1.u.–x., 1.aa., 1.ee–ff., and 1.hh. She is a 32-year-old financial advisor employed by a defense contractor since November 2003. She has been continuously employed since at least September 1996, except for a brief period April-June 2001, when she was on maternity leave, receiving only disability payments as income. She previously held a clearance in 1998 and 1999, when she was an on-site contractor employee at two government agencies.

The SOR alleges, and government exhibits substantiate, 36 delinquent debts attributable to Applicant, totaling over \$50,000. Applicant admits 19 debts totaling more than \$37,000;³ she denies 17 debts totaling nearly \$13,000. Applicant asserts, without corroboration that she has paid the debts at 1.ff. and 1.hh. She claimed, also without corroboration, that she is making payments on the educational debts at 1.o., 1.p., 1.q., and 1.r.

Applicant's post-hearing submission (A.E. A) later documented that, as of May 2009, she had made four payments totaling almost \$1,700 on the educational accounts. However, over \$1,300 of this amount was paid through IRS offsets of her tax refunds in March and June 2008. Applicant made one regular payment in October 2007 by wage garnishment and one regular payment in November 2007 by direct remittance. There have been no credits to the account since June 2008.

The remainder of A.E. A documents a judgment that was satisfied in July 2008 that Applicant did not correlate to any of the alleged debts. She was also able to document settlement offers—for discounts of 50% or more—from the creditors at SOR 1.b., 1.z., and 1.ee, in spring 2009. However, she did not document that she made payments on any of the offers. Further, the total indebtedness alleged for those three debts was only \$1,100, an insignificant portion of her total debt.

Applicant attributes her indebtedness to a substantial decline in income while she was on maternity leave from April-June 2001—a period during which she received approximately two-thirds of her previous income through medical disability. She also cites the fact that she receives no support from her child's father. Many of the debts she disputes are medical accounts for which she had insurance. However, she did not corroborate her claims that she paid the necessary co-pays and deductibles associated with those expenses. She denies other debts because she does not recognize the creditors, but has not taken into account potential successors-in-interest to the original creditors. When she received the SOR in January 2009, she began sending letters to her creditors to establish repayment plans, but had not yet actually established any repayment plans or paid any of the debts.

³However, it appears that the debts at 1.s. and 1.t. are the same debt. Although having different account numbers, the amounts owed are identical.

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.⁴

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 difficulties dating to at least 2001.⁵ She is not financially sophisticated, and it appears from the record that if she was not living beyond her means before the birth of her child, she was living very close to that line—with little margin for error. A brief decrease in her income, and the addition of her child to her financial obligations was sufficient to drive her into extensive delinquent debt. This suggests that poor financial practices already existed.

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are both recent and multiple.⁶ Strictly speaking, the problems are not largely due to circumstances beyond her control. Pregnancy alone is not such a circumstance, and even concluding that the medical necessity of her maternity leave was unforeseeable, the three-month duration of that decrease in income does not reasonably account for the nature and extent of the financial difficulties reflected in her credit reports. In addition, her inability or unwillingness to pursue financial support from the child's father further demonstrates her naivete regarding financial matters.

Even if I confine my analysis to the 19 debts she admits, \$37,000 in delinquent debt demonstrates just how close to the line or below the line she had to be operating before her maternity leave. Further, her response has been largely unsatisfactory.⁷ She has not documented her claimed efforts at credit counseling or exploring bankruptcy, nor availed herself of any alternative forms of credit counseling. Thus, there is no evidence that Applicant has undertaken effective financial counseling. She has not demonstrated that the problem has been brought substantially under control.⁸ The payments that have been paid have not been paid in a timely, good-faith manner.⁹ Indeed, the only corroborated payments were for her educational loans, were largely effected through garnishment or IRS offset, and most recently occurred in June 2008. Whatever efforts she has made to address her poor finances have been sporadic, ineffectual, and largely undocumented. The record does not indicate when, if ever, her financial situation will be settled enough for her to make clear progress on her delinquent debts. I conclude Guideline F against Applicant. Consideration of the whole person factors yields no different result.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a–s:	Against Applicant
Subparagraph t:	For Applicant
Subparagraph u–jj:	Against Applicant

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

⁷¶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;

⁸¶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;

⁹¶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