



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-09308
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

December 31, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 18 May 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 16 April 2009, and requested a decision without hearing. DOHA assigned the case to me 8 October 2009. The record in this case closed 19 September 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 (DoD) 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Revised Adjudicative Guidelines (RAG) effective within DoD on September 1, 2006.

Findings of Fact

Applicant admitted the SOR financial allegations. He is a 43-year-old facilities representative employed by a U.S. defense contractor since January 2003. He appears to have previously held a clearance in 1996, but does not appear to hold one currently.

The SOR alleges, government exhibits substantiate, and Applicant admits 27 delinquent debts totaling nearly \$9,000, falling delinquent since his Chapter 7 bankruptcy discharge in May 2000. Applicant also admits being \$5,800 past due on a \$39,000 mortgage. Although not alleged in the SOR (and thus not part of my analysis on the merits of this case), he appears to be nearly \$12,000 past due on a nearly \$155,000 mortgage.

Applicant received a Chapter 7 bankruptcy discharge of over \$26,000 in May 2000. Since that new start, Applicant has acquired delinquent debt as noted above. He has attempted to resolve these delinquent debts through Chapter 13 wage earner plans filed in May 2002, January 2003, and February 2006. Each of these plans has eventually been dismissed because of Applicant's failure to maintain required payments, although the plan dismissed in May 2008 appears to have disbursed some funds to Applicant's creditors. Applicant intends to satisfy his debts, and provided a personal financial statement in February 2009 that shows \$265 monthly positive cash flow. However, Applicant is not currently making payments on any of his delinquent accounts.

Applicant claims, without corroboration, that some of the alleged debts were included in his Chapter 7 bankruptcy filing and that other debts are duplicates. He attributes his financial problems to his wife's job loss in 2002 and medical expenses for his son's surgery in 2007. However, he acknowledges that he and his wife have been unable to live within their means for several years.

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 The record contains little evidence in extenuation, mitigation, or rehabilitation. Consequently, none of the mitigating factors for financial considerations fully apply. Applicant has been unable to live within his means since before 1999. His wife's unemployment and his son's surgery may have contributed to the pre-existing problems, but they cannot fully mitigate them. Further, there is no evidence of a plan for repayment or the possibility of a plan for repayment. The record also lacks any information upon which to base a "whole person" analysis. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-ff: 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

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;