



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



In the matter of:)	
)	
XXXXXX, Xxxxxx Xxxx)	ISCR Case No. 08-10274
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 9 February 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 4 March 2009, and requested a hearing. DOHA assigned the case to me 4 May 2008, and I convened a hearing 9 June 2009. DOHA received the transcript (Tr.) 17 June 2009. Applicant timely submitted a post-hearing exhibit on 17 June 2009 that I admitted as A.E. G.

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 of SOR 1.a., 1.b., and 1.h. She denied the remaining allegations. She is a 26-year-old financial analyst employed by a defense contractor since June 2008, seeking access to classified information. She has not previously held a clearance. She is a single mother of two children who receives some financial support from both fathers.

The SOR alleges, and government exhibits substantiate, 8 delinquent debts totaling over \$26,000. Applicant admits three debts totaling over \$25,000. She denies the remaining debts as paid or unknown to her.

The record reflects several brief periods of unemployment between June 2003 and June 2008. However, Applicant attributes her financial problems to breaking up with her fiancé and moving out of the house they jointly owned in January 2008 because of domestic abuse issues.² He is the father of her younger child, but she took both children with her when she moved out. She had an unwritten agreement with her ex-fiancé that he would remain in the house and make all payments associated with the house. He did not do so and the three debts Applicant admits are for the defaulted first and second mortgages and an unpaid electric bill. The mortgage company eventually foreclosed on the house. Applicant received notice from the mortgage company of a February 2009 foreclosure sale, but has not learned whether there is any deficiency balance for which she may be responsible.

Applicant denied the debts at SOR 1.c. and 1.d. because she paid them in March 2009 (A.E. G), after she received the SOR. She denied the remaining debts either because she did not recognize them, could not find them on the credit report she obtained on-line, or believed them to be in dispute for several years. However, she based these conclusions on only one credit reporting agency. She purported to be unaware that there were three major credit reporting agencies.³ Nevertheless, on 12 June 2009—three days after her hearing—she entered a debt consolidation program that obligates her to pay approximately \$200 per month for the next 22 two months to resolve the four remaining non-mortgage debts alleged in the SOR as well as five other delinquent accounts not alleged in the SOR. She is to make payments by direct debit from her checking account beginning in late June 2009.

Applicant was aware of her delinquent mortgages in July 2008 when she completed her clearance application (G.E. 1). She was aware of the government's concerns about her delinquent accounts when she answered DOHA interrogatories in January 2009 (G.E. 3). She took little action to resolve her debts until she received the

²Applicant bought the house jointly with her fiancé in June 2006, when both were employed in the mortgage industry.

³Which is difficult to believe given her employment in the mortgage industry.

SOR in February 2009, despite the fact that she showed positive monthly cash flow of over \$1,600 on a January 2009 personal financial statement (G.E. 3).

Applicant received an excellent character reference from her supervisor, who is aware of her financial problems (A.E. A). She has received one promotion since joining the company in June 2008, and expects another soon. She currently makes about \$46,000 per year. She received an excellent employment evaluation from her employer (A.E. B). She also received two excellent recommendations for admission to a local university in May 2009 (A.E. C). She moved to a new apartment to lower her rent expenses (A.E. D). She attempted to refinance her mortgages in December 2008 (G.E. 3), but that application was denied in January 2009 (A.E. E) because of her history of insufficient fund checks with the lender. She has been taking several course at a local community college to improve her education (A.E. F).

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

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

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 beginning in January 2008.⁵ Although Applicant has taken steps to address her non-mortgage debt, she did not do so until after she received the SOR. While she is on firmer financial footing today, she has not reached a stage where her goal of financial stability seems assured.

The mitigating factors for financial considerations provide mixed help to Applicant. Her financial difficulties are both recent and multiple.⁶ The debts she admitted may reasonably be considered largely due to circumstances beyond her control—setting aside the judgment issues of not having a written agreement with her ex-fiancé regarding responsibility for house-related expenses. However, she knew enough about the legal consequences of being a joint owner on the house and electric account. She has not been completely responsible overall in addressing these three debts, and the final resolution of the mortgages has not been documented.⁷ She appears to have the financial means to resolve the nine delinquent debts she consolidated in June 2009, but this belated arrangement does not fully demonstrate that the problem has been brought substantially under control.⁸ Further, there is no evidence that Applicant has undertaken financial counseling. None of the debts that have been paid were paid in a timely, good-faith effort.⁹ She may now have the means to get and keep her financial house in order, pending documentation of any remaining mortgage liability. Nevertheless, she has yet to provide documentation that she has made the first payment under her debt consolidation program, or establish a track record of regular payments. 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. Analysis of the whole person factors requires no different result.

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

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.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a–h: 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