



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



In the matter of:)
)
) ISCR Case No. 08-12028
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

December 21, 210

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 6 January 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E, Financial Considerations and Personal Conduct.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 15 March 2010, and I convened a hearing 13 April 2010. DOHA received the transcript (Tr.) 21 April 2010.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibits (AE) A-D.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant denied owing a nearly \$51,000 collection account (SOR 1.a.), claiming he had been making regular payments on this account since June 2009. He admitted failing to disclose that his security clearance had been revoked by the U.S. Army in March 1984 (SOR 2.a.), but claimed that he misread the question. He is a 49-year-old senior program management specialist employed by a defense contractor since August 2008. He seeks to retain the security clearance he held as needed while in the military and on an interim basis until the SOR was issued.

When Applicant applied for an industrial security clearance in September 2008 (G.E. 1), he answered “no” to a question (26b) asking if he had ever had a clearance revoked. In fact, Applicant had his clearance revoked by the U.S. Army in March 1984, while he was on active duty. Applicant states (Answer) that he “misread the question” and did not intend to mislead the government because he had “nothing to hide.”

When Applicant’s clearance was revoked in March 1984, he had been in the Army about three years. None of the stated reasons for the revocation are relevant to the issues raised in the SOR. He retired in February 2002 as a Sergeant First Class (SFC, paygrade E-7) with over 20 years exemplary service, during which he was awarded the Meritorious Service Medal twice, the Army Commendation Medal four times, the Army Achievement Medal five times, the Good Conduct Medal six times, the Overseas Service Ribbon three times, the National Defense Service Medal, and the Army Service Ribbon, among other awards. He has been married over 26 years. His wife retired with 20 years military service in 2004.

The SOR alleges, and Government exhibits confirm, a single collection account totaling nearly \$51,000 on defaulted education loans. Applicant states, and corroborates, that he has been making regular bi-monthly payments of \$50 since June 2009 (GE 2; AE A, C, D). The \$50 payments were part of a rehabilitation program Applicant entered into with the creditor. After nine months of regular payments, the loan was considered rehabilitated and transferred to a regular commercial lender—with a higher loan payment. Applicant made his first \$303 payment by automatic debit on 7 April 2010 (A.E. C). He has made timely monthly payments since then.

Applicant’s financial problems began after he retired from the military. He experienced unstable employment—including periods of unemployment and underemployment—as well as the financial pressures of having to maintain two households while he and his wife were geographically separated because of their respective job requirements. They fell behind on their bills, including the educational loans at SOR 1a. Not until August 2008 did Applicant and his wife both have stable employment, as well as maintaining only one household.

At that time, Applicant and his wife began addressing their delinquent accounts. The Government credit reports reflect those efforts, as they show accounts paid and

closed (sometimes at Applicant's request, sometimes by the creditor's action). Applicant's exhibits show many payments to creditors who were not alleged in the SOR.

In June 2009, Applicant began a rehabilitation plan with the holder of his defaulted educational loans. The plan required bi-monthly payments of \$50 for nine months. The payment amount was based on a leave and earnings statement (LES) that Applicant provided the lender. After Applicant successfully rehabilitated his loans, the account was assigned to a regular commercial lender to resume normal payments. Applicant made his first regular payment of \$303 per month in April 2010. Applicant also had another set of educational loans that were never delinquent because they were in their forbearance period. He is current on his monthly payments on this account. The forbearance ended in March 2010, and Applicant began monthly payments of \$180.

Applicant and his wife are current on all their accounts, and all their taxes. They have a budget. The loan payments on his educational loans are made by automatic debit.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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 substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to 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

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

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant and his wife experienced financial problems after he got out of the military because of his unemployment and underemployment, and having to maintain two households while his wife remained on military duty and Applicant took a job in another state.⁴

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are both recent and multiple,⁵ the circumstances under which they occurred are unlikely to recur now that his wife has retired, Applicant and his wife both have stable employment, and they no longer have to maintain two households.⁶ Failure to pay the debts was due to circumstances beyond his control, and he acted responsibly in addressing his debts.⁷ As soon as he obtained stable employment, he began addressing his delinquent debts. The proof of his success is that by the time the Government issued the SOR, the only delinquent debt to allege was Applicant's education loan. While there is no evidence that he sought credit counseling, he and his wife have a budget, and have otherwise brought the problem under control.⁸ Having substantially addressed all his delinquent debts—including the debt alleged—before the SOR was issued, the timing of the payments constitutes a good-faith effort to satisfy his debts.⁹

Department Counsel argues that these efforts are somehow inadequate, regarding the education loan, because Applicant could have paid more to the creditor during the rehabilitation, but did not volunteer to do so. Applicant testified credibly that he provided the LES required by the creditor, and the creditor's policy was to set the rehabilitation payments at \$50 bi-weekly regardless of the debtor's income. As both the creditor and debtor have an interest in successful rehabilitation of the loan, this policy seems more than reasonable. Further, given Applicant's denial of the financial allegation, the Government had the burden of proving the debt and any adverse circumstances surrounding the rehabilitation of the debt. Finally, given Applicant's clean financial record while in the military and his speedy resolution of his financial problems

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

⁵In the sense that he had other delinquent debts that were resolved before the SOR was issued.

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.

once he obtained stable employment, there is nothing in the record to suggest that Applicant's financial problems will recur. I conclude Guideline F for Applicant.

The Government failed to establish a case for disqualification under Guideline E. Applicant credibly testified that his omission was an oversight based on his misreading the question, that he had previously reported the revocation on military clearance applications, and consequently he had nothing to hide. Thus, Applicant lacked the required deliberate intent to mislead the Government.¹⁰ However, even if Applicant had intended to mislead the Government, the amount of time which has passed since the revocation must be considered. A 24-year-old clearance revocation is neither relevant nor material to a clearance adjudication, particularly where the issues in that revocation are neither relevant or material to the current adjudication.¹¹ I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph a: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a: For Applicant

Conclusion

In view of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

¹⁰¶ 16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

¹¹In fairness to Department Counsel, the SOR incorrectly alleged the date of revocation as March 2004, and she moved to amend the SOR to reflect the correct date of 1984 (Tr. 11). Nevertheless, her insistence (Tr. 67-70) that the "falsification" remained relevant after 24 years because it showed Applicant's "untruthfulness," goes beyond the commonsense decision I am required to make.