



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



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| In the matter of: |) | |
| |) | |
| SSN: |) | ISCR Case No. 09-02299 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

February 26, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 5 August 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.¹ Applicant answered the SOR 21 August 2009, requesting a hearing. DOHA assigned the case to me 28 September 2009, and I convened a hearing 17 November 2009. DOHA received the transcript (Tr.) 24 November 2009.

¹DOHA 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 revised adjudicative guidelines (RAG) effective within DoD on September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations, except for debt 1.c.—a medical debt the government's evidence shows was paid in 2004.² He is a 45-year-old program manager employed by a defense contractor since September 2000. He seeks to retain the clearance he has held without incident since July 2003.

The SOR alleges, government exhibits confirm, and Applicant admits two delinquent accounts totaling over \$99,000. The debts consist of \$99,000 mortgage arrears (1.a.) and \$647 education loan arrears (1.b.). Applicant also admits filing for chapter 13 bankruptcy protection in 2002 (1.d).

Applicant filed for chapter 13 bankruptcy protection in November 2002, and had the petition voluntarily dismissed in June 2003. The filing was not motivated by any actual financial difficulty, but as a protective measure by Applicant regarding incipient divorce proceedings that he anticipated would be contentious, particularly regarding the status of the marital home.

Applicant's mother had colon surgery at the end of 2006. When Applicant went to care for her during her recovery, he discovered that her financial situation had gotten out of control. Over the next several months, Applicant spent \$7,000–8,000 getting her back on her feet. In doing so, he fell a few payments behind on his mortgage. This occurred during the collapse of the housing markets. The creditor bank, one of the banks that was heavily invested in sub-prime mortgages, was unwilling or unable to provide Applicant with the information necessary to rehabilitate his mortgage or obtain a loan modification. This bank was later taken over by another bank, one more willing to work with Applicant, but also facing a large backlog of loans requiring modification. The successor bank did not give Applicant a plan leading to loan modification until October 2009 (AE A). Applicant made the first required payment in November 2009 (AE A).

Applicant's credit reports (GE 2, 5) reflect that most of his accounts are paid as agreed. However, many of those accounts also reflect that they had previously been past due between 30 and 120 days. Notably, the education loan (1.b.) was reported as currently 120 days past due, with a past due balance of \$1,256 (GE 2). The past due balance was later reported reduced to \$647 (GE 5). However, AE B reflects that Applicant made regular payments on the education loan between December 2008 and November 2009.

Applicant has an undergraduate degree in finance. His personal financial statement (GE 4) reflects that he has adequate income to complete the necessary mortgage payments required to obtain modification of his mortgage and to keep his education loan current. His divorce was final in January 2006, and he is no longer obligated to pay child support.

²GE 4 shows this debt as a collection account paid in May 2004. Department Counsel conceded that the debt should not have been alleged in the SOR (Tr. 15). Accordingly, I find 1.c. for Applicant.

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 commonsense consideration of the whole-person factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against an 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. An 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.

Analysis

The government established a case for disqualification under Guideline F. Notwithstanding his mother's surgery, Applicant's financial problems appear to be the result of some inattentiveness on his part.³ That said, Applicant's financial problems have been confined to a short period beginning in late 2006.

Applicant satisfies important aspects of the mitigating factors for financial concerns. While his financial difficulties were both recent and multiple, they were confined to a relatively short period. They certainly occurred under circumstances not likely to recur.⁴ The debts were largely due to circumstances beyond his control, but he acted responsibly in addressing his debts. Given the collapse of the housing market in

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

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

2007, it is understandable that he experienced difficulty securing the cooperation of his first mortgage bank, and an extended delay in obtaining cooperation from the successor bank.⁵ However, Applicant has begun a loan modification program with that bank, and has the means to continue the required payments. Although he has not received financial counseling, the fact that he has a degree in finance lessens the importance of this factor.⁶ The 2002 chapter 13 bankruptcy filing lacks security significance both because of the passage of time, and because it was clearly the result of maneuvering for his impending divorce, and not financial need.

The real security concern in this case boils down to a whole-person issue. Despite the size of the debt, the circumstances surrounding it are such that there is no reasonable risk that Applicant would resort to illegal activity to obtain funds to pay it. Further, Applicant has a five-year track record of safely handling classified information. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph a-d: For Applicant

Conclusion

In light of all 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

⁵¶ 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.

⁶¶ 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.