



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-02954
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 30 June 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 provided an undated answer, requesting a hearing. DOHA assigned the case to me 9 September 2009, and I convened a hearing 8 October 2009. DOHA received the transcript (Tr.) 13 October 2009.

Findings of Fact

Applicant denied the SOR allegations, except for 1.c. and 1.j. He is a 52-year-old truck driver employed by a defense contractor since May 2008. He has not previously held a clearance.

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 the DoD on September 1, 2006.

The SOR originally alleged, and government exhibits confirmed, 10 delinquent debts totaling nearly \$22,000. However, record evidence revealed that debt 1.a. was a duplicate of 1.e. Consequently, I find 1.a. for Applicant, and the resulting debt to be discussed is nine debts totaling over \$21,000. Applicant admitted two debts (1.c. and 1.j.) totaling \$365—both of which he claimed to be paying.² He also claimed, and documents confirmed, he paid debt 1.g. just before receiving the SOR and he paid debt 1.h. just after receiving the SOR. The bulk of the remaining debts he denies because they no longer appear on his credit report. Applicant paid debts 1.i. and 1.j. after the hearing (AE J).

Applicant experienced financial problems as a result of his divorce in 1996. He filed a chapter 13 bankruptcy petition, made the required payments, and received a discharge in 1999. However, his financial problems resumed in 2002, and continue to date.

Applicant was unemployed briefly from January–June 2002. He has been continuously employed since then, although he did have to work reduced hours May–September 2008 when his father had health issues. Other than these two circumstances, Applicant offers no explanation for his inability to stay current on his finances.

The largest debt (1.b., over \$15,000) is for an automobile note he co-signed for a friend knowing that there was a substantial likelihood she would default on the note. The next most significant debt (1.d.) is a judgment for unpaid rent. Applicant states his intent to pay his debts, but he was not doing so as of the date of the hearing. AE J reflects payments to two other creditors just before, and just after, the hearing, but Applicant has not correlated the payments to any of the SOR debts and the account numbers on the checks do not match the account numbers of any of the SOR debts.

Applicant provided no work or character references. He does not have a budget and has not received financial counseling.

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 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

²However, Applicant's Exhibit (AE) J reflects that he paid the debt at 1.j with a single payment after the hearing.

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.³

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has significant delinquent debt dating back to 2002 for which he has no ameliorating explanation.⁴ Applicant's brief period of unemployment may have contributed to his financial difficulties, as may have his father's health issues. However, he did not act to get his finances in order in a timely and effective manner.

Applicant satisfies none of the mitigating factors for financial concerns. His financial difficulties are both recent and multiple.⁵ The debts do not appear to be due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.⁶ He has not sought credit counseling, made a budget, or devised a plan to address his debts, so I cannot conclude he has brought the problem under control.⁷ His belated and sporadic payments to creditors do not constitute a good-faith effort to

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

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

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

⁶¶ 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.

⁷¶ 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.

satisfy his debts.⁸ DOHA is not the collection agent of last resort. Outwaiting your creditors until your delinquent debts fall off a credit report is not a repayment plan. Nor does it relieve an applicant's responsibility for the debt. Applicants are expected to honor their financial commitments voluntarily entered into. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a:	For Applicant
Subparagraph b-j:	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

⁸¶ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.