



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

In the matter of:)
)
) ISCR Case No. 09-04215
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

March 31, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 March 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me 3 May 2010, and I convened a hearing 8 June 2010. DOHA received the transcript 16 June 2010.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-6, and Applicant's exhibits (AE) A-L. AE L was timely received post-hearing.

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 admitted SOR allegations 1.b, d-e, g, l-n, and t-w. She denied allegations 1.a, c, f, h-k, and o-s. She is a 39-year-old proposal coordinator employed by a defense contractor since June 2008. She was unemployed from December 2007 to February 2008 and from June 2001 to September 2001. Otherwise, she has been employed full time since September 2001. She is a divorced mother of two. She held an interim secret clearance in March 2006 (GE 1). Her current clearance status is unknown.

The SOR alleges, and Government exhibits (GE 4-6) substantiate, 23 delinquent debts totaling nearly \$27,000. Applicant admits 11 delinquent debts, totaling nearly \$14,000; she denies 12 debts totaling just over \$13,000. Applicant reported an unpaid judgment, two garnishments, and 20 delinquent debts on her November 2008 clearance application (GE 1). She stated that she was working with each creditor to establish a repayment plan.

In a December 2008 interview with a Government investigator (GE 2), Applicant attributed her financial problems to her unemployment from December 2007 to February 2008, her underemployment from February 2008 to June 2008, losing a roommate who was sharing expenses, and sending her oldest child off to college for the first time. However, she also acknowledged that some of her indebtedness was due to her neglect of her financial responsibilities. Although she had received some credit counseling, she was living paycheck to paycheck. During her interview, she acknowledged 22 delinquent accounts, some of which fell past due before her unemployment and some of which fell past due after she got her current job.

The delinquent debt at SOR 1.a has been in collection since October 2009 (AE A). Applicant claimed (Tr. 25), through an unconfirmed telephone conversation, to have a settlement offer to resolve the account by making a lump-sum payment of \$395, or two payments of \$232 (the account having now grown to \$464). She also claims (Tr. 25) that she agreed to pay SOR debt 1.b in two equal payments in June and July 2010. However, her post-hearing exhibit (AE L) contains no confirmation of the first payment despite the fact that AE L was submitted after the first payment was due.

Applicant purportedly settled SOR debt 1.c in August 2009 (AE B, GE 3), conditioned on equal monthly payments September–December 2009. She made the September and October payments (AE K), but did not make payments in November and December. Applicant claims (Tr. 25) that the account has been sold to a new collection agent.

Applicant states that SOR debts 1.d and 1.e are the same, but the credit reports show different account numbers for both. The creditor for 1.e offered Applicant a settlement at a 50% discount in March 2010, conditioned on her accepting the offer within two weeks. However, Applicant did not have the funds to take advantage of the settlement offer.

Applicant paid SOR debts 1.f and 1.j by equal monthly payments September–November 2009 (AE K, D). The credit reports (GE 4-6) confirm that the two allegations reflect the same account.³ Applicant established that SOR debt 1.k was a mistake and the account has been deleted from her credit report.

In April 2009, Applicant agreed to make \$200 monthly payments by automatic payment on SOR debt 1.g (GE 3), and documented payments in April 2009 (AE E), June 2009 (GE 2009) and June 2010 (AE L). She claimed (GE 3) to have changed the payment to \$100 monthly beginning September 2009. However, Applicant’s February 2010 credit report (GE 4) shows that the amount delinquent was reduced only \$200 from the June 2009 credit report (GE 5). Applicant believes (Tr. 25) she should not have to pay SOR debt 1.h—a time-share mortgage she co-signed for a friend (Tr. 45)—because the friend is legally obligated to pay it. However, Applicant acknowledged (Tr. 58) that she knew her friend could not qualify for the mortgage without Applicant as co-signer.

SOR debts 1.i and 1.l reflect the same debt listed by the original creditor and the second collection agent (GE 4-6). Beginning in November 2008 (AE F), the first collection agent offered to settle the debt for an 80% discount, payable in two equal monthly payments. However, Applicant lacked the funds to take advantage of the settlement. The collection agent offered to negotiate a settlement figure in February 2009, without success. In October 2009, the original creditor offered the same 80% discount. This time, Applicant accepted. Applicant made the first payment of \$393 in October 2009 (AE F, K). Applicant claims (Tr. 30) that she made all but the last payment before the account was sold to a second collection agent, but AE K shows no payments from November 2009 to January 2010. As the second collection agent reported the account in January 2010 (GE 4), I conclude that Applicant made one payment in October 2009 and made no further payments, causing the account to be sold again.

Applicant made three equal monthly payments September–November 2009 to satisfy SOR debt 1.r (AE K, L). Applicant settled SOR debt 1.s in August 2009, and made the first of four required payments (GE 2).⁴ She made the remaining payments as scheduled in September, October, and November 2009 (AE K).

Applicant also used pay-day loans to meet expenses and then could not repay the loans. She made a repayment plan on SOR debts 1.t, 1.u, and 1.v⁵ in August 2009 and made required payments in August 2009 (GE 2), October 2009 (AE K, I),

³However, the amount alleged in 1.f is only the amount past due reported by the collection agent at the time. The total amount due reflects the past-due amount in 1.j, plus interest (GE 5).

⁴The original debt was \$780.

⁵Totaling \$1,750.

November 2009 (AE K), and January 2010 (AE K).⁶ However, she was unable to keep up the payments, and after the hearing in June 2010 settled the three accounts for \$917, conditioned on paying half by the end of June 2010 and half by the end of July 2010 (AE L). However, Applicant provided no proof that payment was actually made.

Except as noted above, Applicant's debts remain unresolved. She has paid three debts (f/j, r, and s) and had one debt removed from her credit report as not hers (k). She had repayment plans on a number of other debts that she was not able to complete, or has had to renegotiate with no confirmation of payment on the new plan.

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 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 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.⁷

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

⁶The payments seem to correspond to the monthly payments for August 2009, October 2009, November 2009 and December 2009.

⁷See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

difficulties and financial irresponsibility going back several years.⁸ Although she has made some progress on her debts, that progress is insufficient to overcome the security concerns raised by her financial situation.

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are both recent and multiple.⁹ The problems are partly due to circumstances beyond her control (unemployment and loss of roommate), but also due to her irresponsibility (pay-day loans for living expenses and co-signing a time-share mortgage for a friend who could not afford it).

Applicant's efforts to address her debts have been mixed. She has taken no action on a number of debts, or has been unable to take action. She paid several debts before the SOR was issued, and had made progress on, but not completed repayment plans on several others. She had settlement offers from creditors that she was unable to take advantage of, even though the offers presented substantial discounts on her original debt. Thus, her response has been only partly satisfactory.¹⁰ She has had some credit counseling, but the fruits of that counseling have not been completely effective. Substantial progress remains to be made to bring her financial problems under control.¹¹ The payments that have been paid have been paid largely in a timely, good-faith manner,¹² but her inability to see some of the repayment plans through to completion demonstrates just how much her finances remain unsettled. I resolve Guideline F against Applicant. Consideration of the whole-person factors yields no different result.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a–e:	Against Applicant
Subparagraphs f and j:	For Applicant
Subparagraphs g–i:	Against Applicant
Subparagraphs k and l:	For Applicant
Subparagraphs m–q:	Against Applicant
Subparagraphs r and s:	For Applicant

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

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

¹⁰¶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;

¹¹¶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;

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

Subparagraphs t–w:

Against Applicant

Conclusion

Under 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