



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



In the matter of:)	
)	
)	ISCR Case No. 09-06536
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 1 April 2010 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, and requested a hearing. DOHA assigned the case to me 15 June 2010, and I convened a hearing 10 August 2010. DOHA received the transcript (Tr.) 17 August 2010.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibits (AE) A-G.

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 the SOR allegations except for SOR 1.g. He is a 59-year-old security program information analyst employed by a defense contractor since May 2009. His annual salary is \$70,000. He was unemployed for six months before getting this job. He was married to his first wife for 20 years, until her death in November 2003. He remarried in December 2004 and separated in July 2007. He and his wife reached a property settlement in March 2010 (AE G). He has not previously held a clearance.

The SOR alleges, and Government exhibits confirm, 13 delinquent debts totaling over \$54,000. Applicant admits a nearly \$12,000 past-due mortgage. He allegedly failed to file his federal income tax returns from 1994 to at least 2005. Although not alleged, Applicant similarly failed to file his state income tax returns during the same period. The debts alleged consist of seven collection accounts, three charged-off accounts, a judgment, a past due mortgage, and a \$30,000 Internal Revenue Service (IRS) lien. Although Applicant denied the debts in his answer, he had earlier confirmed the debts in June 2009 (GE 2). Applicant's answer shows that Applicant paid the judgment (SOR 1.a) in August 2009, received a refund of overpayment on the collection account at SOR 1.d, and successfully challenged the charged off account at SOR 1.h. Accordingly, I find those allegations for Applicant.

Applicant attributes his failure to file his federal income tax returns as required to his first wife's unsuccessful battle with breast cancer. However, this explanation is inadequate. Further, Applicant offers no satisfactory explanation for his failure to file after her death. For example, his 1997 tax return was not filed until April 2009, 11 years after it was due, and six years after his wife's death. It appears that most of his delinquent tax returns were filed in 2009.

Applicant's wife was first diagnosed with breast cancer in 1995. She had periods of remission and recurrence in the eight years before she died in November 2003. Applicant fails to explain how the course of the disease prohibited him from filing his taxes on time, for not only did he not file on time, he did not request extensions. Applicant's solution for his deliberate decision not to file was to increase his income tax withholding to ensure that he would always overpay his liability. However, because Applicant did not file his income tax returns, the IRS filed substitute tax returns and levied a \$30,000 tax lien in May 2006. Only then did Applicant request an audit of his taxes.

The efficacy of this approach is demonstrated by the incomplete IRS records Applicant submitted in his answer and his response to DOHA interrogatories (GE 3). Applicant owed money on his 1997 taxes. He overpaid in 1998, but could not collect the refund or apply the overpayment to 1997 because the statute of limitations for refunds had run by the time he filed his return. Similarly, he owed money on his 2000 taxes, overpaid in 2001, but the refund was time barred. Overpayments in 2006 and 2008 were applied to his 1997 liability, which was still nearly \$1,000 in August 2009. He has paid nothing on his 2000 liability. There are no records for 1994-1996, 1999, 2002-2005,

2007, or 2009. Applicant's situation with the IRS is convoluted. Some of his delinquent tax returns are still being processed, and there is no indication when Applicant may be able to make repayment arrangements with the IRS.

Applicant also owes nearly \$12,000 on a delinquent time-share mortgage. Applicant and his second wife bought the time share before they were married in December 2004. Although the mortgage is a joint account, the property settlement assigns the full amount of the debt to him, in consideration of her paying him \$5,000. Applicant has made no payments on the mortgage. The other major debt is for a repossessed automobile that Applicant bought in his own name and as putative representative of his second wife's flower shop (AE C). The property settlement assigns responsibility for company debts to his wife.

Applicant has had difficulty identifying some creditors, and except for the three accounts noted above, has made only sporadic efforts to resolve the other debts. He has disputed some debts with the credit agencies, which have confirmed the debts as valid. Applicant is now trying to dispute them directly with the creditors. He had a settlement offer from the creditor at SOR 1.I which he claims, without corroboration, to have accepted and paid (AE E). He has not received credit counseling or financial education. The record contains no work or character references.

Policies

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. 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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own.

The “clearly consistent with the national interest” standard compels deciding 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’s credit reports establish his indebtedness. Applicant was aware of the alleged debts since at least June 2009, yet except for the three debts noted, he took no effective action to address the debts before the SOR was issued.⁴ Applicant’s difficulties with the IRS, due entirely to his failure to timely file his income tax returns, seem far from resolution. He has take no action on the other major debt—the time-share mortgage.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁵ The evidence does not show the debts were due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.⁶ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁷ Only three of the alleged debts have been paid in a timely, good-faith effort.⁸ Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a, d, h:	For Applicant
Subparagraph b-c, e-g, l-n:	Against Applicant

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

⁴¶19 (a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (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;

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

Conclusion

In view of 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