



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 09-06782 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

July 27, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 15 June 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) listing security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct.² Applicant timely answered the SOR, and requested a decision without hearing. DOHA assigned the case to me 14 June 2011. The record in this case closed 21 April 2011, the day Applicant’s response to the government’s File of Relevant Material (FORM) was due. Applicant submitted no response to the FORM.

¹Consisting of the FORM, Items 1-14.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 the SOR financial allegations, except for SOR 1.c (a \$2,100 judgment), SOR 1.g (a \$372 collection account he claimed he paid), SOR 1.k (a \$14,000 automobile repossession), and SOR 1.q (a \$919 collection account). He denies the falsification allegations of SOR 2.a, claiming that omission of his adverse financial information was an oversight. He is a 44-year-old system administrator employed by a U.S. defense contractor since February 2009. He had a clearance in 1985, but has not previously held an industrial clearance.

Applicant has an extensive history of financial problems dating back to October 1989, when he first filed for chapter 13 bankruptcy protection. The petition was later converted to a chapter 7 bankruptcy petition and he was discharged of his dischargeable debt in May 1991 (Item 11, 12). In October 2004, he again filed for chapter 13 bankruptcy protection, but his petition was dismissed without confirmation of a payment plan in May 2005 (Item 11, 13). He refiled his chapter 13 bankruptcy petition in July 2005, but it was again dismissed without confirmation of a payment plan in October 2005 (Item 11, 14).

In addition to the latter two bankruptcy filings, the SOR alleges, and Government exhibits (Item 7, 8, 9) substantiate, 17 delinquent accounts totaling over \$28,000. Applicant admits 14 debts totaling nearly \$12,000. The debts consist of 13 collection accounts, an automobile repossession, one judgment, charged-off education loans, and past-due education loans. Applicant claims, without corroboration, to have paid six small debts totaling \$460. However, only one of these (SOR 1.g) is among the debts he denied owing.

Applicant acknowledges the majority of his delinquent accounts, but during an August 2009 interview with a Government investigator, either disputed the debts or otherwise claimed to not recognize them. He also failed to corroborate the basis of any of his claimed disputes or any efforts he had made to resolve the debts with the creditors. Applicant has not stated any clear reasons for his financial problems. His November 2009 personal financial statement (Item 6) showed positive monthly cash flow of \$1,400. However, he was making no payments on the debts alleged in the SOR.

On Applicant's March 2009 clearance application (Item 5), Applicant answered "no" to 15 questions (§26 b.-p) asking him to report any history of financial problems. In fact, Applicant had an automobile repossession (§26 b.), one unpaid judgment against him (§26e), 13 collection accounts (§26g), one charged-off account (§26h), and many accounts that had been 180-days past due or were currently 90-days past due (§26m and n). Applicant truthfully disclosed a chapter 13 bankruptcy filing (§26 a.) in July 2005 (SOR 1.b),³ but falsely stated that "[a]ll debts were satisfied under bankruptcy and all has been paid off." In fact, the petition was dismissed in October 2005 (Item 14) without confirmation of a payment plan. In addition, during an interview with a Government

³Which Applicant incorrectly estimated as July 2004 on his application.

investigator in August 2009 (Item 6), he falsely claimed to have made payments from October 2004 to February 2005 and received a discharge of his debts, and to have made payments on a second chapter 13 petition (which he placed in 2007) until April 2009 and received a discharge on those debts.

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.⁴

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties, which are ongoing.⁵ Further, he has taken no documented action to address his debts.

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁶ He has not established that his financial problems were due to circumstance beyond his control, nor he has he demonstrated that he acted responsibly in addressing his debts.⁷ He has undertaken no financial counseling.⁸ None of the debts have been paid, much less in a timely, good-faith effort.⁹ I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicants are expected to give full and frank answers during the clearance process. Applicant's failure to disclose any information about his financial problems constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹⁰

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information until his subject interview.¹¹ Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. I resolve Guideline E against Applicant.

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.

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. . . ;

¹¹¶17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

Formal Findings

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| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraphs a-s: | Against Applicant |
| Paragraph 2. Guideline E: | AGAINST APPLICANT |
| Subparagraph a: | 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