



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



In the matter of:)
)
) ISCR Case No. 09-07440
)
Applicant for Security Clearance)

Appearances

For Government: William O'Neil, Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 May 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guidelines F, Financial Considerations and E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 2 November 2010, and I convened a hearing 30 November 2010. DOHA received the transcript 8 December 2010.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-D. AE D was timely received post-hearing.

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 allegations, except for SOR 1.b and 1.h—for which he gave no answer. He is a 38-year-old project manager employed by a defense contractor since September 2010. He has been continuously employed full time since March 1994, except for February 2008 to August 2008. He seeks to retain the security clearance he has held since at least 1999, when he was in the U.S. Marine Corps. He disclosed financial problems on his clearance application then, but still got his clearance. He currently makes \$98,000 per year (Tr. 64).

Applicant married in May 1999 and divorced in April 2002. He has two children from this marriage, for whom he is required to pay child support. His divorce decree did not allocate marital debt between Applicant and his ex-wife (Tr 86).

The SOR alleges, and government exhibits confirm, 20 delinquent debts totaling nearly \$47,000. Applicant did not answer two allegations totaling \$900, although it appears that debt 1.h is a duplicate of debt 1.m, which he admitted.

Applicant attributes his financial problems to his 2002 divorce, his February 2008-August 2008 unemployment, and simply not living within his means (Tr. 44). In May 2010, Applicant consulted an individual credit advisor who had been recommended to him, paid him a fee, but did not work with the advisor further because he discovered that the advisor only analyzed his credit report and recommended a course of action and did not actually negotiate with his creditors (Tr. 48, 98). In September 2010, Applicant contacted a credit repair company, but did not begin to work with it earnestly until a couple of weeks before the hearing (AE C; Tr. 110). The company prepared a proposed course of action for Applicant (AE D) that addresses only nine of the 20 debts, although Applicant states (Tr. 99) that he has not executed a formal agreement with company.

Applicant provided satisfactory proof that SOR debt 1.f, 1.h (duplicate of 1.m), and 1.q were paid before the SOR was issued. He also showed that debt 1.d was a duplicate of debt 1.a. However, he made a number of uncorroborated claims about the status of the remaining accounts. He was disputing a number of accounts, one because he thought it might be a fraudulent account, others because he claimed to have settled them or made partial payments not reflected in his credit reports. While his credit reports (GE 3-4; AE A, D) reflect some accounts being disputed, Applicant produced no documentation of his efforts to dispute the accounts or responses from creditors to confirm the nature of the disputes. He claimed to have settled and paid debt 1.o for \$1,500, and claimed to have documentation (80-81). However, he provided no documentation in his post-hearing exhibit (AE F). He also claimed (Tr. 63) that he was addressing his child support arrears (SOR 1.r) through wage garnishment.

Applicant's May 2009 credit report³ (GE 4) lists 18 of the 20 alleged delinquent debts. His May 2010 credit report⁴ lists 12 of the 20 debts. His November 2010 credit report⁵ (AE A, D) lists 17 of the 20 debts. Except as discussed here, none of them have been paid. The plan proposed by his credit repair company addresses only 9 of the 20 debts. Applicant has known at least since his interview with a government investigator in 2009 that his finances were an issue for the Government.

On Applicant's May 2009 clearance application (GE 1), Applicant answered "no" to questions (§26) asking him to report any history of financial problems. In fact, Applicant had six unpaid judgments against him (§26e), eight collection accounts (§26g), three charged-off accounts (§26h), and three accounts that had been 180-days past due or were currently 90-days past due (§26m and n). Applicant states (Answer) that he did not intend to falsify his clearance application and was unaware of the contents of his credit reports at the time he signed his application because he had not examined his credit reports. However, his testimony belies his claims that he answered the financial questions to the best of his ability (Tr. 31)

Throughout his testimony, Applicant acknowledged that he was aware of some delinquent debts and was negotiating repayment plans with others (Tr. 31). He knew he had automobile repossessions that were going to appear on his credit reports (Tr. 46, 73). He generally acknowledged that he had money problems, had not paid adequate attention to his finances, and had money issues to resolve because he was behind in his accounts (Tr. 86-94). He knew he had several judgments against him, including some that remained unpaid (Tr. 90-91). Moreover, he knew—because of his experience in the Marine Corps—that the Government wanted to know about his financial problems and that his answers were untruthful (Tr. 107-109). Finally, he acknowledged the deliberateness of his falsifications (AE F).

Applicant's fiancé considers him a loyal and patriotic American and generally knows about his financial problems. She had been telling him for the last two years that he should get some credit counseling (Tr. 123).

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,

³This tri-agency report reflects entries from the three major credit reporting agencies, Experian, Equifax, and Trans Union.

⁴An Equifax only report.

⁵Also a tri-agency report.

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.⁶

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's debts go back several years, and he has not taken effective action to address them until recently.⁷

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁸ While his divorce was a circumstance beyond his control, the divorce was final in 2002. His unemployment was also a circumstance beyond his control, but he has been employed full-time since August 2008. Generally living beyond his means is not a circumstance beyond his control, and he has not acted responsibly in addressing his debts.⁹ He has received no credit or financial counseling beyond what counseling may be associated with the credit repair company he has been using, nor has he demonstrated that his financial problems are

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

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

⁹¶ 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;

under control, or that he has a plan to bring them under control.¹⁰ The plan devised by the credit repair company—a company he has not yet formally hired—addresses only nine of the remaining 15 debts. This effort is both belated and incomplete. He has not made a good-faith effort to satisfy his debts.¹¹ 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—information he was both aware of and aware of the Government's interest in learning about them—constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹²

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.¹³ 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.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-c:	Against Applicant
Subparagraph d:	For Applicant (duplicate)
Subparagraph e:	Against Applicant
Subparagraph f:	For Applicant (paid)
Subparagraph g:	Against Applicant

¹⁰¶ 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;

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

¹²¶ 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. . . ;

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

Subparagraph h:	For Applicant (paid)
Subparagraphs i-l:	Against Applicant
Subparagraph m:	For Applicant (duplicate)
Subparagraphs n-p:	Against Applicant
Subparagraph q:	For Applicant (paid)
Subparagraphs r-t:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-e ¹⁴ :	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

¹⁴At hearing, the Government moved to amend the SOR to conform to the evidence, by adding a falsification allegation that Applicant failed to disclose two automobile repossessions within the last seven years. I granted the motion (Tr. 124-130).