



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-01268
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 12 August 2011, 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, requesting a hearing. DOHA assigned the case to me 6 October 2011, and I convened a hearing 17 November 2011. DOHA received the transcript (Tr.) 28 November 2011.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibits (AE) A-B.

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 SOR financial allegations 1.a, 1.e, 1.k, 1.l, and 1.n-1.s. He denied SOR 1.b-1.d, 1.f-1.j, and 1.m, claiming that he had paid seven accounts and was paying on two others. He is a 43-year-old systems administrator employed by a defense contractor since January 2005. He seeks to retain the clearance he was granted in about January 2005.

Applicant has a history of financial difficulties dating back to at least March 2001, when he filed for chapter 7 bankruptcy protection to rid himself of over \$15,000 in unsecured debt. He acquired the debts while he was in the military, and just could not stay current with the payments after he got married in September 1995 and got out of the military in April 1997. He received his discharge in June 2001. Although Applicant denies having received bankruptcy protection under chapter 13 in 1994, the bankruptcy petition prepared by Applicant's lawyer records just such a discharge, on the signature page where Applicant validated the chapter 7 filing (GE 3).

The SOR alleges 18 delinquent debts totaling over \$64,000. However, the judgments at SOR 1.o and 1.p appear to constitute SOR debt 1.b, reducing the total amount owed to just under \$62,000. Further, the actual delinquent debt at SOR 1.k is \$20,549, not \$30,000, and the actual delinquent debt at SOR 1.n is \$5,096, not \$19,000, further reducing the delinquent debt to about \$38,500 (GE 4). Applicant denied about \$5,100 delinquent debt, admitting the rest. The bulk of the debt is for a \$20,549 automobile repossession (SOR 1.k) and a \$5,096 automobile repossession (SOR 1.n).³ Another \$4,000 is for another delinquent education loan (SOR 1.l).

Applicant claims to have paid seven debts totaling \$600, but his evidence proves only that he settled five medical debts totaling \$347 (SOR 1.f-1.j) in May 2011 (Answer), along with seven medical debts not alleged in the SOR. He documented a repayment plan for SOR debt 1.m, which showed four \$100 payments February-May 2011. However, the payments were credited to accrued interest, and the balance on the account has grown to nearly \$2,400 (Answer). He has not made all the scheduled payments since May 2011, so he has still not begun reducing the principal balance (Tr.

³Applicant claimed for the first time at hearing (Tr. 42) that SOR debts 1.k and 1.n were for the same repossession. However, that claim is belied by Applicant's credit reports, his own earlier statements, and his testimony. Applicant testified (Tr. 32) that he has several repossessions. His September 2009 credit report (GE 4) shows that the \$30,524 individual automobile loan Applicant took out in June 2005 was current, with a reported balance of \$20,549 and no amount past due. The same credit report showed a \$19,705 joint automobile loan taken out by Applicant in June 2004, charged off in March 2007 for \$5,566, with a \$5,096 past due balance remaining. Applicant discussed this delinquent debt with a government investigator in October 2009 (GE 2) and acknowledged that it was a joint debt that he and his first wife incurred, but could not agree how to resolve. In his May 2011 response to DOHA interrogatories (GE 3), Applicant documented his agreement to settle the remaining debt for \$3,245, payable in 24 monthly payments of \$135. Nevertheless, Applicant has made none of the required payments. In the same interrogatories, Applicant claimed without corroboration to have settled the \$20,549 debt for \$15,999 payable in \$100 monthly installments. Again, none of the required payments have been made.

56). In addition, although his answer claimed to be paying on SOR debt 1.b, he had only proposed a repayment schedule, which the creditor rejected (Tr. 44).

Applicant filed for chapter 7 bankruptcy protection in 2001 because of several individual debts that he was just not able to bring under control. However, his financial difficulties resumed in 2001-2002 when he and his first wife were experiencing marital difficulties. He made good money, but she did not work, and both of them had poor spending habits. In addition, his employment was subject to the vagaries of government contract work and he had some health problems between 2005 and 2008. Applicant's first marriage ended in 2005, and when he remarried in 2008, his second wife brought financial problems of her own to the marriage.

Applicant attributes his financial problems largely to his separation and divorce. He moved out of the marital home—solely owned by his ex-wife—in December 2004, and remained homeless for all practical purposes until 2007. Nevertheless, he bought a \$30,000 automobile in 2005 because he was angry about the divorce and thought he deserved a new automobile (Tr. 41). He was hospitalized for three days in March 2005, but the stay was covered by medical insurance. However, because Applicant's job changes sometimes meant changes in his medical insurance, he sometimes experienced problems sorting out which insurer should be paying the bills. Applicant claims without corroboration to have been unemployed for about a month in late 2007-early 2008. Nevertheless, Applicant's July 2005 clearance application (GE 1) shows continuous employment from at least May 1997.

In 2009, Applicant and his second wife began working with a credit counseling organization that sensibly recommended that they pay their small debts quickly and begin saving to be able to address their larger debts from a position of strength, that is, by being able to accept whatever settlement offer was made by the creditor once contact was made. The credit counselor prepared a budget that shows that Applicant has \$700 positive monthly cash flow even with allowance for what the counselor calls the "Murphy's law" factor. The budget also shows Applicant making \$700 monthly charitable contributions.

However, Applicant's progress under the plan has been painfully slow. His evidence shows that he paid four outstanding medical bills (not alleged in the SOR) totaling about \$530 in May 2011, and also settled another 12 accounts totaling about \$740 for \$595 in May 2011. Those 12 accounts include five accounts totaling \$347 alleged in the SOR. Applicant made total payments of \$400 on a repayment plan (1.m) but has not been able to keep up with the payments. Applicant's ability to work on repaying the SOR debt has been hampered by his repaying legal fees he incurred in 2009 trying to reduce his child support payments from \$1,400 to \$1,000 per month (AE A). He has been repaying \$300 per month on that debt. However, it is not clear why Applicant incurred that debt, since Applicant and his wife came to a mutual agreement to reduce the child support to \$1,100 per month, and that figure was never judicially confirmed (Tr. 36-37).

Applicant has a \$20,000-30,000 retirement account with his current employer that both he and his employer make contributions to. His interest in the account will vest in two years, meaning he will be able to borrow against the balance to address his larger debts, which is his plan. He has never been delinquent with the rent at his current home (AE B).

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.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. Applicant has a history of financial problems dating back to at least 2001, if not 1994. The financial problems appear to be due to his financial mismanagement and not any one factor, or combination of factors, beyond his control. Applicant has over \$38,000 in unresolved debt.⁵ In keeping with the recommendations of his credit counselor, he has not been in contact with any of the creditors, waiting until he has sufficient money to pay whatever lump sum settlement he might be able to negotiate.

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 does not fully meet any mitigating factors for financial considerations, and the partial application of the mitigating conditions is insufficient to overcome the adverse implications of his current financial situation. His financial difficulties are recent and ongoing, and apparently not under circumstances unlikely to recur.⁶ Overall, Applicant has not acted responsibly in addressing his debts.⁷ Applicant has been working with a credit counselor for over two years, and has significant positive monthly cash flow, yet has documented payments of only \$1,500, about half of which is SOR debt. These payments are inadequate to constitute a good faith effort to address his debts⁸ or to demonstrate that his financial problems are headed for resolution.⁹ The financial counseling he has undertaken has resulted in very little progress. The unplanned legal expenses were incurred to reduce his child support obligation. Even recognizing the drain those expenses placed on his finances, Applicant still had discretionary income that could have been used to address the next level of debts (those more than \$200. Apparently, he intends to take no further action on his debts until he fully vests in his retirement accounts in two years. This is too open ended a plan to mitigate the security concerns raised by his financial problems. Further, the record lacks any information upon which to base a “whole-person” analysis. Applicant has a long term plan, but very little short term progress. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-e:	Against Applicant
Subparagraphs f-j:	For Applicant
Subparagraphs k-s	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.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁹¶ 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;

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