



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



In the matter of:)	
)	
XXXXXXXX, Xxxxxx Xxxxxxx)	ISCR Case No. 10-03152
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

06/11/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 16 November 2011 and 18 April 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 16 March 2012, and I convened a hearing 18 April 2012. DOHA received the transcript 26 April 2012.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-5, and Applicant's exhibits (AE) A-G. AE G 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 the SOR allegations, except for SOR 1.f, 1.I-1.p, and 2.a-2.b. She is a 34-year-old security compliance associate employed by a defense contractor since August 2006. She has been continuously employed full time since at least September 2001, including working two full-time jobs from June 2006 to August 2006. She appears to have held a clearance when she was employed on a Government contract from November 2002 to August 2006.

Applicant has an extensive history of financial problems, extending back to at least August 2001, when she sought Chapter 7 bankruptcy protection. Her debts were discharged in December 2001. It is not clear when she began experiencing financial difficulties again, but she reported financial difficulties on her November 2009 clearance application (GE 1). Those difficulties included her Chapter 7 bankruptcy discharge in December 2001 (which she attributed to several delinquent credit cards), a collection account from May 2005, and two charged-off credit cards in January 2008.

Applicant attributes her 2001 bankruptcy discharge to using credit cards for living expenses while she was in college and had no regular income. She attributes her current financial problems to her boyfriend moving out of their apartment in May 2009. They had been sharing the rent and when he moved out, she could not keep up with her credit cards.

Applicant lived in one state all of her life until moving to a nearby state in 2009. When she moved she did not notify her employer of her new address or change her driver's license to her new state (SOR 2.a and 2.b). Consequently, her employer has been withholding state income taxes for the wrong state. Applicant has filed her state income tax returns for past years in the state where she no longer lives. She has not filed her state income tax returns for the state where she has lived since 2009. Her federal income tax return was not filed in April 2012 as required, and she did not request an extension (Tr. 70-75, 85-86, 87-89).

The SOR alleges, and Government exhibits (GE 2-3, 5) substantiate, 13 delinquent debts, totaling nearly \$18,000. Applicant denies four debts totaling nearly \$12,000. Nearly \$11,000 of that amount is for three defaulted education loans (SOR 1.I-1.n). Applicant settled two delinquent debts, not alleged in the SOR, before the SOR was issued (GE 4).

Applicant established a repayment plan with the collection agent for SOR debts 1.b-1.d in December 2011 (Answer; AE B). She was to pay \$30 bi-weekly until the aggregate balance of \$300 was paid, beginning in mid-December. Applicant documented making the December payment by post-dated check, as well as five payments by automatic payment February-April 2012 (AE G). She expected to make the last payment on the account the Friday after the hearing (Tr. 47).

At the time of her Answer, Applicant had reached no settlement agreement with the creditors at SOR debt 1.e, 1.g-1.l, and 1.k. She had established a repayment plan with the creditor at SOR debt 1.f to pay \$25 monthly until the balance was paid. Through her December 2011 statement, she had reduced the original \$551 balance to \$270 (Answer). She documented another \$141.09 in auto-draft payments December 2011-March 2012, reducing her April 2012 balance to \$194 (GE 5; AE D). The account continues to accrue fees and interest.

In December 2011, Applicant reached a repayment agreement with the creditor at SOR debt 1.j to make \$53 monthly payments beginning the end of December 2011 (Answer; AE E). She documented the first payment by post-dated check (AE F), as well as her April 2012 payment by automatic debit (AE G). However, her April 2012 credit report (GE 5) suggests that the only payment she made on this account before April was the December 2011 payment.³

Applicant obtained her college loans in the late 1990s, when she spent one year in college. She used credit cards to pay her living expenses while in college, expecting to pay them off when she got a job after college. However, the jobs she had were not enough to pay her credit cards, and she filed her Chapter 7 bankruptcy petition. Her education loans could not be included in the bankruptcy, but they were subject to deferral for a time after she left college. When the deferral ended, she did not begin repayment. After defaulting on her student loans, Applicant began making \$233 bi-weekly payments in September 2011. Through her January 2012 paycheck (AE C), she had paid almost \$2,600 on the SOR-alleged balance of \$11,000. These payments allowed her to enter a rehabilitation plan in February 2012 (AE B) that required her to make \$131 monthly payments beginning March 2012. The accumulated balance subject to the rehabilitation plan was over \$12,000. However, she began making payments in February 2012 and has documented payments for February, March, and April 2012.

At hearing, Applicant claimed to have received settlement offers from the creditors at SOR debts 1.e and 1.h, but she was unable to take advantage of the offers and had yet to come to an agreement on alternative plans (Tr. 50, 53). She has still not been in contact with the creditors at SOR debts 1.g , 1.l, and 1.k.

Applicant's finances continued to be problematic. In addition to her unresolved debts, GE 5 reflects two new collection accounts: an \$833 cable bill reported in July 2011 and a \$500 payday loan reported in December 2011. Further, there are additional financial problems lurking because Applicant has failed to file state income tax returns in the correct state since 2009, when she moved to a different state (SOR 1.o), and neither filed nor requested an extension on her 2011 federal income tax return due in April 2012 (SOR 1.p).

³AE F reflects that the balance alleged in the SOR had grown to \$486, and the creditor acknowledged receiving the \$53 post-dated check. The creditor intended to present the post-dated check for payment at the end of December 2011. GE 5 reports payments received by the creditor through March 2012, and reflects a new balance of \$415—showing that only the December 2001 payment had been made.

Applicant claimed that she and her boyfriend have a budget, but she did not submit it, and she has apparently not received any credit counseling or financial education. She acknowledged living paycheck to paycheck (Tr. 76). Money has been tight because her new live-in boyfriend was laid off for three months in September 2011, before getting a part-time job.

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 a history of financial difficulties dating to at least 2001.⁵ Following her bankruptcy discharge, her finances remained tight. She fell delinquent on at least one account in 2005 and did not begin payments on her education loans. Indeed, it does not appear that she began to address

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; (g) failure to file annual Federal, state, or local income tax returns as required . . .

her delinquent accounts until her subject interview with a Government investigator in February 2010.

The mitigating factors for financial considerations provide little help to Applicant. Her financial difficulties are both recent, multiple, and occurred under circumstances likely to recur.⁶ The problems are not largely due to circumstances beyond her control, particularly where they are of such long duration, and appear to be mostly due to her inability to live within her means. Her response to her debts is mixed.

Applicant began addressing SOR debt 1.f and her education loans (SOR 1.l-1.m) before the SOR was issued, and can reasonably be given credit for resolving those debts. She entered into repayment plans for SOR debts 1.b-1.d and 1.j in December 2011, after she received the SOR. She appears to have made regular payments on debts 1.b-1.d, but not on debt 1.j. She still does not have any agreements on SOR debts 1.e, 1.g-1.l, and 1.k. So the issue for me is whether the pattern of payments made supports a conclusion that Applicant has a plan for addressing her debts.

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.⁷ However, on balance, I conclude that Applicant has not demonstrated that she has a plan and has taken significant actions to implement the plan.

Applicant has resolved two debts. SOR debt 1.f has been reduced to less than \$200 and will be paid soon, and she has a manageable repayment plan on her education loans. However, paid debt 1.f has been replaced by two new collection accounts in 2011 that total over \$1,300, nearly three times the original amount of debt 1.f. SOR debts 1.b-1.d will be fully paid soon despite the fact that Applicant did not enter into a repayment plan until after she received the SOR. She has not been able to keep up with required payments on the other debt she reached a repayment agreement on in December 2011 (SOR 1.j). Given that there are five SOR debts that she has yet to begin resolving, and the potential financial problems pending with her unfiled state and federal income tax returns, I cannot conclude that her current payment efforts constitute a clear plan and significant action.

Applicant has taken no action on three significant debts, has no plan for addressing them, and has no plan for even having a plan. Any action she has taken on her debts has occurred after she applied for her clearance. DOHA is not the collection agent of last resort and her efforts to address her debts after the SOR do little to dispel the security concerns raised by her financial problems. Thus, her response has been

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

⁷ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

largely unsatisfactory.⁸ She has not undertaken credit counseling or any kind of financial education. Her closing argument plea for more time to get her finances in order concedes that her financial problems are not under control.⁹ The payments that have been paid have not been paid in a timely, good-faith manner.¹⁰ Whatever efforts she has made to address her poor finances have been belated, sporadic, and ineffectual. The record does not indicate when, if ever, her financial situation will be settled enough for her to make clear progress on her delinquent debts. I resolve Guideline F against Applicant. Consideration of the whole-person factors yields no different result.

The Government established a case for disqualification under Guideline E. Applicant's failure to change her home address on her driver's license or to notify her employer of her new residence suggests that she does not follow rules and regulations.¹¹ However, the real consequence here relates to its potential impact on her finances. Applicant's state income taxes can be expected to become a financial mess for her as she sorts out how much she owes to each state and how to get payments improperly made to one state refunded and applied to her tax liability in the state where she now resides. As she has not yet begun to move on this issue, I cannot conclude that this conduct is unlikely to recur.¹² Accordingly, I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a–e:	Against Applicant
Subparagraph f:	For Applicant
Subparagraphs g–k:	Against Applicant
Subparagraphs l–n:	For Applicant
Subparagraphs o–p:	Against Applicant

⁸¶ 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;

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;

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

¹¹¶ 16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . ;

¹²¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur;

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraphs a–b: 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