



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

In the matter of:)
)
XXXXXXXXXX, XXXXXXXX XXXXX) ISCR Case No. 10-06905
)
Applicant for Security Clearance)

Appearances

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

04/03/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 22 September 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me 29 November 2011, and I convened a hearing 5 January 2012. DOHA received the transcript 12 January 2012.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-7, and Applicant's exhibits (AE) A-D. AE C was timely received post-hearing; AE D was untimely, but Department Counsel did not object to its admission.

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 denied the SOR allegations, except for SOR 1.h, 1.i, and 1.o. She is a 37-year-old security officer employed by a defense contractor since August 2009. Except for the period of June-August 2009, Applicant has been continuously employed since at least March 1999. Applicant's spouse of nine years left her in August 2007. She claims (Tr. 26) that most of the debts belong to him, although she acknowledges that she co-signed for the debt. She did not think she should have to pay, so she did not. She is now trying to resolve the debt because of her security clearance, which was first granted in June 2009. However, she appears to have been working on her delinquent debts since her interview with a Government investigator in March 2010. She reported financial difficulties on her January 2010 clearance application (GE 1).

The SOR alleges, and Government exhibits (GE 2-3) substantiate, 14 delinquent debts totaling over \$21,000. Applicant admits two debts (SOR 1.h,1.i) totaling nearly \$11,000, along with a Chapter 7 bankruptcy discharge in August 2005 (SOR 1.o).

Applicant documented that SOR debt 1.a was included in her Chapter 7 bankruptcy (SOR 1.o), although she has yet to convince the collection agent of that fact. Applicant's daughter claims to be responsible for SOR debt 1.b, although Applicant is a joint owner on the account (AE B).

In July 2011 (GE 4), Applicant was at least two months behind on SOR debt 1.e. In September 2011 (Answer), Applicant brought the account current, but by November 2011, she was a month behind (AE B). In July 2011, the creditor at SOR debt 1.h proposed resolution of the \$8,494 remaining balance—a balance over \$1,000 more than alleged in the SOR. Applicant claimed that she had been paying \$112 monthly since April 2011, but documented only a \$112 payment in September 2011 (AE B). She later documented a payment in December 2011 (AE C). She also documented (AE D) that she renegotiated the settlement agreement in February 2012 to settle the remaining \$7,900 balance for a total payment of \$2,818, paid in \$235 monthly installments from February 2012 through January 2013.³

Applicant claimed that she had been paying on SOR debt 1.i since February 2011. Her Answer documented bi-weekly recurring payments in May and June 2011, and so presumably the recurring payment of \$75 every two weeks in December 2011 and January 2012 (AE B) was also for SOR debt 1.i. However, she has not provided any documentation connecting those payments to the debt.

Applicant documented (GE 4) that she settled SOR debt 1.j in May 2011. She also documented that in June 2011, a creditor offered to settle an outstanding debt for

³Although Applicant only documented the two \$112 payments, I infer that she made the other required payments because I believe the creditor would not have agreed to the substantial discount on the remaining balance that it made in January 2012, to be paid over the next 12 months, if Applicant had not established a satisfactory record of payment.

seven payments totaling \$910. She later documented (AE C) that six payments had been made, with only a January 2012 payment remaining. However, the named creditor and the original creditor listed on the letters do not correspond to any of the named creditors in the SOR, and Applicant has not provided the thread to connect the payments to the SOR. She annotated the June 2011 settlement offer to indicate that the account was for both SOR debt 1.j and SOR debt 1.m. She annotated the January 2012 creditor letter to suggest it might be for SOR debt 1.j. She documented (GE 4) settling SOR debt 1.k for about 25% of the amount owed in March 2011. Applicant documented (AE B) paying \$113 on SOR debt 1.l in September 2011, and paying the \$50 debt at SOR 1.n in December 2011.

Applicant has not addressed, or documented addressing, three medical bills (SOR 1.c, 1.d, 1.g) totaling \$1,000. Nor has she addressed a delinquent telephone account (SOR 1.f) totaling nearly \$600.

Applicant's credit reports show several accounts (not alleged in the SOR) that were previously past due, but were now current. In her answer and her exhibits, she documented other delinquent debts that she had satisfied or brought current. It appears that she began addressing her debts around the time she met with the government investigator in March 2010, although she may have taken some action before then. She has not obtained financial counseling or taken any financial management training. She presented no evidence of a budget.

Applicant has excellent work and character references (AE A). Although they all recommend her for her security clearance, none of them appears to be aware of her financial issues.

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 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, 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 by showing Applicant’s substantial delinquent debt, despite a Chapter 7 bankruptcy discharge in August 2005. Applicant has a history of financial difficulties going back to at least 2007.⁵ Although she has made considerable progress on her debts, Department Counsel correctly argues that the remaining issue is whether that progress is enough to overcome the security concerns raised by her financial situation. On balance, I conclude that Applicant mitigated the security concerns.

Financial considerations mitigating factors provide mixed help to Applicant. Her financial difficulties are both recent and multiple, and the circumstances they occurred under are not unusual.⁶ The problems are at least partly due to circumstances beyond her control (separation), although her petulance in delaying addressing what she admits was joint debt because she thought her husband should pay it was, at least initially, not responsible.⁷

However, she appears to have started addressing her delinquent accounts well before the SOR was issued, because the credit reports and Applicant’s exhibits show several accounts that were delinquent but are now current. Her evidence shows that of the four largest debts alleged, one (SOR 1.a) was included in her bankruptcy, one (SOR 1.b) belongs to her daughter, one (SOR 1.h) has been on a satisfactory repayment plan since April 2011, and one (SOR 1.i) appears to be on a repayment plan. Six other debts have been addressed by payment, settlement, or partial payments. Only four accounts remain unaddressed. Applicant has not addressed, or documented addressing, three medical bills (SOR 1.c, 1.d, 1.g) totaling \$1,000. Nor has she addressed a delinquent telephone account (SOR 1.f) totaling nearly \$600.

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;

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;

Nevertheless, she continues to make progress on her delinquent debt. In this regard her efforts to deal with her delinquent debts are largely satisfactory. While she has had no credit counseling or financial management training, and does not appear to have a budget covering her day-to-day finances and her repayment plans, there is clear evidence that she is making progress on bringing her financial problems under control.⁸ Once she got over her anger at her husband refusing to address his share of the joint debt, the payments that have been paid have been paid largely in a timely, good-faith manner.⁹ The comparatively small balances that remain to be addressed do not appear to me to be unmanageable given the progress Applicant has made to date. The Appeal Board has made it clear 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.¹⁰ Applicant has such a plan. Accordingly, I resolve Guideline F for Applicant. Consideration of the whole-person factors confirms this result.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-o:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

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.

¹⁰ISCR Case No. 07-06482 (App. Bd. 21 May 2008).