



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



In the matter of:)	
)	
)	ISCR Case No. 10-07922
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, 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 21 June 2011, 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 27 September 2011, and I convened a hearing 2 November 2011. DOHA received the transcript 10 November 2011.

¹Consisting of the transcript (Tr.) and Government exhibits (GE) 1-5.

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.b and 1.i. He is a 35-year-old mail clerk employed by a defense contractor since 1996, although only recently has his job come to require a security clearance. He has not previously held a clearance.

In his June 2009 clearance application (GE 1), Applicant failed to disclose any history of financial problems. During an August 2009 subject interview (GE 2), Applicant claimed that he omitted his financial history because the clearance application did not ask for any financial information. He later claimed that he was unaware of the delinquent accounts.

The SOR alleges, and Government exhibits confirm, 14 delinquent debts totaling nearly \$39,000; he admits two debts totaling \$514. He claimed, without corroboration, that he contacted the creditor for SOR debt 1.c (a \$115 medical debt) the week before the hearing and was to begin payments the week after the hearing. He also claimed that he had not contacted the creditor for SOR debt 1.l (\$399), but planned to begin payments the week after the hearing.

Although Applicant denied the remaining debts, during his August 2009 subject interview he acknowledged as his debts 1.c, 1.e, 1.f, 1.l, 1.j, 1.k, and 1.n. SOR debts 1.g-h and 1.j-n are education loans Applicant took out in 2003. Applicant has made no payments on these loans since 2007, although he believes that the Internal Revenue Service seized his income tax refund for 2009 and applied it to his education loans. The record does not show which of the loan accounts may be duplicates and Applicant provided no clarification. SOR debt 1.e is for an automobile repossession. Applicant claims to not recognize the debt.

Applicant attributes his financial problems to losing a part-time job in 1996, his separation from his first wife in 2007 and subsequent divorce, and the death of his aunt in 2007. SOR debt 1.f was a delinquent first mortgage on a house that has now been foreclosed upon. SOR debt 1.c (\$224) is a delinquent cable bill. Both of these debts are joint obligations of Applicant and his ex-wife.

Applicant has not contacted any of the creditors holding his delinquent debt to either confirm the debts or dispute them. Applicant submitted no character or work references.

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, 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.³

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 taken no action to address them.⁴

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and occurred under circumstances that could recur.⁵ While the debts arguably occurred under circumstances beyond his control, he has not acted responsibly in addressing his debts.⁶ He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control.⁷ He has not made a

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

⁶¶ 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;

⁷¶ 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;

good-faith effort to satisfy even the debts he acknowledges as his.⁸ Accordingly, 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. Although Applicant failed to report any financial problems, he was at least aware of his delinquent education loans. This conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.⁹

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.¹⁰ Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel, particularly with his background as a Government security specialist. 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. Accordingly, I resolve Guideline E against Applicant.

Formal Findings

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

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

⁹¶ 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. . . ;

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

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