



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



In the matter of:)	
)	
)	ISCR Case No. 10-07941
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

July 27, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 24 February 2011, the Defense Office of Hearings and Appeals (DOHA) sent a Statement of Reasons (SOR) to Applicant listing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR and requested a decision without hearing. The record in this case closed 22 May 2011, the day Applicant's response to the FORM was due. DOHA assigned the case to me 12 July 2011.

¹Consisting of the File of Relevant Material (FORM), Items 1-9.

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. She is a 48-year-old administrative assistant employed by a U.S. defense contractor since August 1987. She seeks to retain the security clearance she was granted in August 2005. She has been married over 31 years and has two grown sons. Her husband has owned his own construction company for 20 years.

The SOR alleges, Applicant admits, and Government exhibits substantiate, 11 delinquent debts totaling over \$52,000. However, the record documents that debt 1.i is a duplicate of 1.e and debt 1.j is a duplicate of 1.g, thus there are nine delinquent debts totaling nearly \$46,000 at issue.

Except for the education loans at SOR 1.g—for which her wages are garnished \$550 per month—none of the debts have been paid and Applicant has no plans in place to pay them. The accounts fell delinquent around 2007, when her husband's company experienced a sharp drop in business. Applicant believes that they will be unable to address the debts until his business improves.

Aside from the education loans (1.g) and a deficiency balance on a car loan Applicant co-signed for a friend (1.h), the delinquent debts are for credit cards opened by Applicant and her husband. It appears that they used the cards to pay everyday living expenses, and were making monthly payments on the accounts, but were unable to keep up the payments when construction business fell off.

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.³

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 going back several years.⁴ Although her financial problems coincide with the decline in her husband’s business, the unsettled forecast for the construction industry makes it impossible to estimate when Applicant’s financial fortunes may improve.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and the economic downturn that caused them is certainly capable of repetition.⁵ The problems are largely due to circumstances beyond her control (husband’s declining business), although it appears that Applicant and her husband were carrying balances on their credit cards at the time his business began to decline. Further, even though Applicant currently lacks the means to pay her debts, I cannot conclude that she has acted responsibly under the circumstances.⁶ She has documented no efforts to contact her creditors or work with them. There is a vague inference in the record that she and her husband have considered bankruptcy, but lack the funds to meet the filing fees.

Applicant has not gotten any financial training or counseling, and she and her husband seem immobilized by their financial problems. Consequently, their financial problems cannot be considered under control.⁷ In addition, there have been no payments on any of the accounts except the garnishment for the education loans.⁸ Applicant’s finances remain unsettled, and the Government is simply not in a position to wait to see when, or if, the construction industry improves. I resolve Guideline F against Applicant. Consideration of the whole-person factors yields no different result.

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;

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

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-h:	Against Applicant
Subparagraphs i-j:	For Applicant (duplicates)
Subparagraph k:	Against Applicant

Conclusion

Viewing 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