



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

In the matter of:)	
)	
XXX, XXXXXX XXXX)	ISCR Case No. 10-10526
)	
Applicant for Security Clearance)	

Appearances

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

03/12/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 7 October 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-C.

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, except for SOR 1.f—which she denied as a duplicate of 1.a. She is a 43-year-old help desk analyst employed by a defense contractor since December 2008. She is a divorced mother of one daughter, and has legal custody of her teenage niece and nephew. She seeks to retain the clearance she apparently received in December 2008.

The SOR alleges, and Government exhibits (GE 4-6) substantiate, eight delinquent debts totaling over \$34,000. Applicant admits seven debts totaling over \$30,000, and the evidence confirms her claim that SOR debt 1.f is a duplicate of SOR debt 1.a. Applicant had a March 2011 offer from the original creditor to settle the account for a 50% discount if she paid within 20 days (GE 3). In June 2011, she claimed, without corroboration, that she was working with the creditor to reach an affordable repayment schedule. Meanwhile, the original creditor sold the account to a collection agent (1.a), and Applicant has not been in contact with the new creditor.

Applicant had a June 2011 offer from the creditor at SOR debt 1.b to settle the debt for a 50% discount (GE 3). Applicant claimed, without corroboration, that she was working with the creditor to reach an affordable repayment schedule. The record does not show if she was able to reach an agreement, however, she was able to satisfy the debt by January 2012 (AE A).

Applicant claimed, without corroboration, that she had an offer from the creditor in SOR debt 1.c to settle the debt for a 50% discount and was working to reach an affordable repayment schedule. However, she has documented no contacts with the creditor and the debt remains unresolved. She also claimed to have settled SOR debt 1.d for a 63% discount. While she had no proof of the agreement, she documented the first of 12 monthly payments in June 2011, as well as monthly payments in August 2011 and October 2011. She did not document the intervening payments in July and September 2011, nor did she document the November and December 2011 payments. However, if she made those payments and otherwise stayed on schedule, the debt would be satisfied in May 2012. Applicant has not been in contact with the creditors at SOR debts 1.e, 1.g, and 1.h.

Applicant attributes her financial problems to being unemployed from April 2007 to June 2008. She used the credit accounts to pay regular living expenses. Her financial problems were exacerbated by her sister's March 2008 death. Applicant took in her teenage niece and nephew and has been supporting them since, to the extent of obtaining legal custody of the children from their father, who otherwise was providing no support. Applicant expects to receive approximately \$1,300 per month in social security payments for the children. She was also expecting an increase in her disposable income in July 2011, when she made her last \$500 monthly automobile payment.

Applicant's December 2008 credit report (GE 4), showed that all her credit accounts were current, including several which eventually became delinquent and were

alleged in the SOR. However, by 2011, many accounts were delinquent (GE 5, 6). Applicant has not had any credit or financial counseling. She credibly states her intent to resolve her delinquent debts. But she also acknowledges having had offers to settle her debts for substantial discounts that she was unable to take advantage of. Her character and work references consider her honest and trustworthy, and they are 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.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 she has made some progress on her debts, that progress is insufficient to overcome the security concerns raised by her financial situation.

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;

The mitigating factors for financial considerations provide insufficient help to Applicant. Her financial difficulties are both recent and multiple, and unemployment is a circumstance that can recur.⁵ The problems are largely due to circumstances beyond her control (unemployment), and her attempts to resolve her debts have not been irresponsible, just incomplete.

Looking at her efforts in a light most favorable to her, she was communicating with the creditor at SOR debt 1.b before the SOR was issued, but only resolved the debt just before the hearing. Similarly, she was communicating with the creditor at SOR debt 1.d in before the SOR was issued, made payments in June, August and October 2011, but did not document the other payments that should have been made by the date of the hearing. She claimed, but did not corroborate, contacts with the creditors at SOR debt 1.a (1.f) and 1.c. She has not been in contact with—or has not corroborated any contacts— with the creditors at debts 1.e, 1.g, and 1.h.

Applicant states a credible intent to resolve her debts, and she has shown considerable character by taking in her niece and nephew upon her sister's death. The record suggests that Applicant has stopped digging a financial hole. The record may even suggest that she is beginning to pull herself out of the financial hole she finds herself in. What the record does not suggest is that she has pulled herself far enough away from her financial difficulties to reasonably conclude that she is unlikely to fall into the hole again. In this regard her efforts to deal with her delinquent debts are only partly satisfactory.⁶ 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. Despite the progress she has made, at best she has resolved only two of the seven debts at issue and she has not even been in contact with some of her creditors. This suggests that substantial progress remains to be made to bring her financial problems under control.⁷ The payments that have been paid have been paid largely in a timely, good-faith manner,⁸ but her inability to see some of the repayment plans through to completion, or more fully document her efforts, demonstrates just how much her finances remain unsettled. I resolve Guideline F against Applicant. Consideration of the whole-person factors yields no different result.

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
Subparagraph a:	Against Applicant
Subparagraph b:	For Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	For Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	For Applicant (duplicate)
Subparagraphs g-h:	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