



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



In the matter of:)	
)	
)	ISCR Case No. 10-10581
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Tori D. Bramble, Esquire

November 30, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 23 August 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 6 October 2011, and I convened a hearing 15 November 2011. DOHA received the transcript (Tr.) 23 November 2011.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-H.

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.b and 1.c. He is a 41-year-old senior systems analyst employed by a defense contractor since May 2010. He has not previously held an industrial security clearance, but had one from 1979 to 1989 when he served in the military.

The SOR alleges, and Government exhibits confirm, seven delinquent debts totaling nearly \$95,000. Applicant admits five debts totaling nearly \$27,000. After years of trying to get the debts under control, Applicant and his wife filed for chapter 13 bankruptcy protection in September 2011 (AE C). The plan, yet to be confirmed, proposes to pay \$456.50 per month for five years, for a total of almost \$27,400, to resolve his indebtedness. He has made the first two required payments (AE H).

Applicant graduated from a U.S. military academy in 1979, and served on active duty until 1989, during which he held the top secret clearance required to work with nuclear propulsion systems. After leaving the military in 1989, Applicant went to work for a non-profit organization. In May 1996, he took a promotion with the organization that required him to move to another state. His wife of 17 years did not relocate with him, although at the time he expected she would eventually do so. In 2001, he realized that she was never going to relocate and he filed for divorce. The divorce was final in March 2004, and he remarried later that month.

In August 2005, Applicant accepted another promotion and relocation with the non-profit, on a four-year contract expiring in August 2009. Applicant might have renewed his contract, but wanted to move on to other challenges. To accommodate the non-profit, Applicant resigned from his position in June 2009, so the organization could hire his replacement. The organization gave him a small severance package. Applicant wanted to remain in the non-profit field, but with the declining economy, he was unable to do so. He was unemployed from June 2009 until May 2010, when he relocated to take his present job.

Applicant and his wife began having financial problems around 2007. Non-profit salaries are not high, and Applicant's wife was a real estate agent experiencing reduced income with the decline in the housing market. They refinanced their house through a "friend," but instead of getting a lower mortgage payment, the payments increased. They did an in-house refinance with another bank, but after making required payments, the bank would not convert the mortgage to a regular mortgage. Applicant and his wife put the house up for sale. The house eventually sold with a shortfall of about \$63,000 (SOR 1.b).

In August 2007, Applicant and his wife contracted with a debt reduction company (AE B) that turned out to be a scam. The state attorney general filed suit against the company in February 2008, but by the time Applicant and his wife discovered that fact, they had paid the company about \$4,100 for debt relief the company never produced. However, the state was able to obtain a \$1,700 recovery for them. In September 2011,

Applicant and his wife consulted a more creditable financial counselor, but they were unable to afford the \$1,900 monthly payments in the counselor's proposed plan (Tr. 63; AE E), particularly where the plan did not include the mortgage shortfall. They realized that their only sensible solution was to pursue the chapter 13 debt reorganization.

Applicant's supervisor—a classmate of his from the military academy who reconnected with Applicant at their 30th class reunion in 2009—considers Applicant honest and trustworthy. His supervisor notes that the Government client is so pleased with Applicant's work that he has been assigned two additional projects to the one he was originally hired to work on. Applicant and his wife have a budget and are current on their day-to-day expenses.

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, but Applicant mitigated the security concerns. Applicant and his wife experienced financial problems when the declining real estate market reduced his wife's income. The problems were exacerbated by two failed refinances of their home, the short sale of that

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

home, and a failed effort at debt consolidation due to the vendor's fraud.⁴ However, the SOR debt has now been consolidated into a chapter 13 debt reorganization and Applicant has made the first two payments pending confirmation of the plan.

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they were limited to the seven debts alleged, and the circumstances under which they occurred are unlikely to recur.⁵ Applicant and his wife proceeded reasonably in trying to refinance their home to cut their expenses and in retaining what they considered a legitimate debt consolidator. The failure of these two efforts were beyond their control, as was Applicant's extended unemployment from June 2009 to May 2010.⁶ Applicant and his wife consulted another credit counselor and only turned to the chapter 13 bankruptcy petition when it was clear that they could not meet the payments proposed by the counselor. Further, it does not appear that Applicant and his wife were living beyond their means in any regard.⁷ Finally, Applicant and his wife did not resort to a chapter 7 bankruptcy petition that would have discharged all their debt, but filed a chapter 13 debt reorganization which will see them repay over \$27,000 of their delinquent debt over the next five years.⁸ Applicant's budget provides for the bankruptcy payments, and given his past efforts to resolve his debts short of bankruptcy, the record does not suggest that Applicant's financial problems will recur. Accordingly, I conclude Guideline F for Applicant.

Formal Findings

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

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.

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