



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



In the matter of:)	
)	
XXXXXXXX, Xxxxx Xxxxxx)	ISCR Case No. 10-10711
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

03/23/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 12 July 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² The Government later raised additional concerns under Guideline E, Personal Conduct. Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 29 November 2011, and I convened a hearing 12 January 2012. DOHA received the transcript 19 January 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-9 and Applicant exhibits (AE) A-E. AE E was timely received post-hearing.

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 financial allegations, except for SOR 1.d-1.e and 1.h-1.j, that he claimed to have paid. He denied falsifying clearance applications in March 1997 and April 2010. He is a 36-year-old job training specialist employed by a defense contractor since April 2010. He has not previously held an industrial clearance, but had a clearance while he was in the U.S. military from February 1997 to April 2004.

The SOR alleges, and Government exhibits confirm, 11 delinquent debts totaling over \$80,000; he admits six debts totaling over \$78,000. He claims to have paid the five debts that he denied, but only documented paying debt 1.j in November 2010—after writing a bad check to pay the debt in February 2010 (AE E).

The admitted debts consist of delinquent first and second mortgages totaling nearly \$53,000 (SOR 1.a, 1.b), two delinquent time-share loans totaling nearly \$15,000 (SOR 1.f, 1.g), a \$1,000 delinquent education loan (SOR 1.e), and a \$9,700 Internal Revenue Service (IRS) lien (SOR 1.k). The delinquent mortgage balances reflect the deficiency balance after a short sale of the property. Applicant claims, without corroboration, that his realtor told him he would have no liability for any balance after the short sale. Applicant has had no contact with the mortgage holder, but states that he will make some arrangement with the creditor if necessary to keep his clearance (Tr. 51). He claimed, without corroboration, to have established a repayment plan with the education loan creditor. Similarly, he claimed, without corroboration to have repayment schedule with the IRS, but documented only one October 2011 payment of \$300 (AE E).

Applicant attributes his financial problems to the fact that his wife was always responsible for family finances, and the financial pressures of maintaining two households when he got out of the military in April 2004 and moved to another state to find work. He was unaware of his financial problems when interviewed by a Government investigator in May 2010 (GE 3), but took little or no action then to resolve his debts, and took little or no action after receiving the SOR in July 2011.

Applicant has favorable work references (AE A-D). He has not had any financial counseling or presented a budget.

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 has been disengaged from—and disinterested in—his financial problems and shows little intention of resolving his debts.⁴

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁵ The factors that contributed to his financial problems can certainly recur. While Applicant was in the military he deferred to his wife to handle the family finances. This is a choice, not a circumstance beyond his control. Further, he appears to have left the military without any particular plan for his next employment. Finally, Applicant has known of the Government's concerns about his finances since at least May 2010, yet is no more involved in his finances, as documented efforts show, than he was while he was in the military. He has not acted responsibly in addressing his debts.⁶ The Government is not the collection agent of last resort, but has a legal and moral interest in whether applicants faithfully discharge their financial obligations. Applicant 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

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;

bring them under control.⁷ He has not made a good-faith effort to satisfy his debts.⁸ I conclude Guideline F against Applicant.

The Government did not establish a case for disqualification under Guideline E. Applicant was unaware of his financial situation when he completed clearance applications in March 1997 and April 2010. Consequently, he lacked the required intent to falsify those applications. I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-l, k:	Against Applicant
Subparagraph j:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraphs a-b:	For 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

⁷¶ 20 (a) 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.