



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXX, XXXXXX XXXXX, XXX) ISCR Case No. 11-00148
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

01/23/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 18 January 2012, the Department of Defense (DoD) 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 before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 13 July 2012 and I convened a hearing 9 August 2012. DOHA received the transcript 17 August 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibits (AE A-I). AE I was timely received post-hearing.

²The DoD 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 based largely on his claim that all the debts have been removed from his credit report. He is a 29-year-old senior remedy consultant employed by a defense contractor since January 2011. He has not held a clearance previously.

In his November 2008 clearance application (GE 1), Applicant disclosed a single delinquent automobile loan (at SOR 1.m) in response to questions asking him to disclose any financial problems. However, in addition to his delinquent automobile loan, Applicant had 18 additional delinquent debts as alleged at SOR 1.a-l and 1.n-s. Applicant was aware that he had many other delinquent debts beside the one debt he disclosed, and claims that he failed to disclose these other debts because he was not aware of the exact number and amount of his debts (Tr. 46). Nevertheless, during a January 2009 subject interview, he told the investigator that he was aware of most of the debts because he had obtained a copy of his credit report in 2006, after he was denied a non-federal job because of his financial problems (GE 2). He also acknowledged (Tr. 44-46; 72-74) that he knew that he had delinquent debts that the Government wanted him to report.

The SOR alleges, and Government exhibits confirm, 19 delinquent debts totaling nearly \$41,000. His evidence shows that he has been paying his delinquent child support (SOR 1.a) by court-ordered garnishment since July 2011 (Answer; AE B), and that he settled a delinquent education loan (SOR1.q) in May 2011 (Answer, AE E). He settled a delinquent cell phone account in August 2012 (AE I). Applicant claims, without corroboration, that the remaining debts have been paid and removed from his credit report or disputed and removed after investigation showed he was not responsible for the debt.

Although Applicant denied the remaining debts, during his January 2009 subject interview (GE 2), he acknowledged owing each of the alleged debts and provided details of the circumstances under which he incurred the debts and defaulted on them. Applicant's failure to corroborate his claims that the debts were paid or removed for other reasons makes it impossible to determine whether any of the debts were actually paid or merely removed from his credit report because they had become more than seven years old.

Applicant attributes his financial problems (Answer; Tr. 24) to his immaturity and financial irresponsibility when he was younger. He claims to have a budget, but provided no copy of it. He has not received any financial counseling. Recently, he has been working to bring delinquent credit card accounts and a mortgage current. He is carrying balances on several credit cards, and usually makes only the minimum payments on the card.

Applicant has not contacted any of the creditors holding his delinquent debt to either confirm the debts or dispute them, although his credit reports show him disputing a number of accounts not alleged in the SOR. Similarly, he provided proof of payment on several accounts not alleged in the SOR. Applicant's character reference considers him honest and trustworthy (AE I).

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 not documented meaningful 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

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;

could recur.⁵ The debts were due to Applicant's financial irresponsibility and immaturity, not circumstances beyond his control, and 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 The Government is not the collection agent of last resort, and outlasting your creditors until the debts age off your credit report is not a financial plan. He has not made a good-faith effort to satisfy the debts.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 beyond his delinquent car loan, he was aware of numerous other delinquent debts because he had reviewed his credit report some years earlier when he had been denied employment because of delinquent debts. 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 Moreover, Applicant had particular reason to know the importance of disclosing his financial problems because he had previously been denied employment because of his delinquent debts. 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

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.

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;

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-p:	Against Applicant
Subparagraph q:	For Applicant
Subparagraphs r-s:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraph a:	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