



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



In the matter of:)
)
) ISCR Case No. 11-00475
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

February 3, 2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 5 May 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing. The record closed 25 September 2011, the day Department Counsel stated no objection to Applicant’s response to the Government’s File of Relevant Material (FORM). DOHA assigned the case to me 27 September 2011.

¹Consisting of the 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 financial allegations. He is a 43-year-old weapons systems technician employed by a U.S. defense contractor since February 2010. Applicant served on active duty in the U.S. military from July 1987 to July 1997, during which time he held a clearance. He held a clearance with another Government agency in the later 1990s. He has not previously held an industrial clearance.

The SOR alleges, Government exhibits substantiate, and Applicant admits 16 delinquent accounts totaling over \$55,000. The Government conceded in the FORM, and Applicant further corroborated in his response to the FORM, that SOR debt 1.g (\$10,485) was erroneously reported on Applicant's credit reports, as it was a workman's compensation claim that Applicant won. Applicant reported 9 of the 15 alleged delinquent debts on his February 2010 clearance application (GE 5). He reported a number of delinquent debts that were not alleged in the SOR, presumably because they had been paid. At least one of the debts alleged in the SOR arose after Applicant submitted his clearance application. Applicant gave fairly detailed accounts of the circumstances surrounding his delinquent debts. However, he was not interviewed during his background investigation, and DOHA sent him no interrogatories.

In Applicant's answer to the SOR, he claimed that he had paid SOR debt 1.n (\$762) and was awaiting confirmation from the creditor. Applicant's response to the FORM provided that confirmation, dated the day before Applicant's answer was submitted. He also claimed, and later confirmed, that SOR debt 1.p (\$13,711) was for a voluntary repossession of an automobile in February 2010. Applicant knew that the automobile would be auctioned and he would be responsible for any deficiency amount. However, the creditor never gave Applicant the deficiency amount, which was about 55% of the amount alleged in the SOR. Applicant paid the \$7,400 deficiency in August 2011. Applicant's answer stated dates by which he would pay each debt from SOR 1.c through 1.f and SOR 1.h through 1.m. Applicant's response to the form documented that those 10 debts had been paid more-or-less as scheduled. Half were paid before the date he indicated; half were paid after the date he had indicated.

Applicant attributed his financial problems to fallout from his October 2002 divorce from his first wife and employment issues. From July 2002 to July 2008, Applicant worked as a bail bondsman and fugitive recovery agent. His pay was directly related to the number of cases he was assigned. In 2007-2008, the number of cases dropped off—in part because of the falling economy and in part because disagreements he had with the owner of the company. He quit that job and discovered that his covenant not to compete applied throughout the state, not just the city where he worked. Applicant moved to another state, and between July 2008 and December 2009, he was either unemployed or underemployed. Sometimes he worked two jobs to make ends meet.

Applicant remarried in January 2010, and he lives with his wife and her three children from an earlier relationship. Applicant took his current job—which requires

deployment to danger zones around the world—because the danger pay and bonuses would allow him to tackle his delinquent debts sooner. That work has supported the payments noted above. The only accounts not fully paid at this time are SOR debts 1.a, 1.b, and 1.o. SOR debt 1.a is an Internal Revenue Service (IRS) lien of \$18,628 entered in April 2009. The IRS applied his \$5,632 refund for 2010 to his account in March 2011, leaving a current balance of \$19,813 including penalties and interest. Applicant states that the balance has grown to \$22,057 with penalties and interest, but he will pay the account in full in December 2011, with his company bonus. SOR debt 1.b is a state tax lien of \$3,429 entered in March 2010 that Applicant will pay in October 2011. Applicant will pay SOR debt 1.o in November 2011.

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 has an extensive history of financial difficulties between 2002 and 2010.⁴

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;

Applicant meets several of the mitigating factors for financial considerations. While his financial difficulties are both recent and multiple, the circumstances that caused them are unlikely to recur if he remains in his current career field.⁵ His financial problems were in part due to circumstances beyond his control, and Applicant acted responsibly to obtain employment that would allow him to quickly address his debts, even if that meant spending significant time away from his wife and family.⁶ While there is no evidence that Applicant has had any financial counseling, he has clearly acted to get his finances under control.⁷ Finally, once Applicant began his current job, he began addressing his delinquent debts. He paid several debts that he noted on his clearance application, but which were not alleged in the SOR. He provided a detailed schedule of when he intended to have the funds to pay 10 of the debts alleged in the SOR, and largely held to that schedule. Although the three remaining debts constitute about 60% of the alleged debt, the debts he paid before the SOR was issued, and the \$17,000 in debt payments he made between the time of his answer to the SOR and his response to the FORM, represent significant progress in a short period.⁸ Coupled with his year-end bonuses, resolving the remaining debt is well in view and his current income level suggests that his financial problems are unlikely to recur. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-p: For Applicant

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

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.