



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



In the matter of:)
)
) ISCR Case No. 11-00533
)
Applicant for Security Clearance)

Appearances

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

February 13, 2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 1 September 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 21 December 2011, and I convened a hearing 24 January 2012. DOHA received the transcript (Tr.) 31 January 2012.

¹Consisting of the transcript (Tr.) and Government exhibits (GE) 1-5.

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 49-year-old network administrator employed by a defense contractor since October 2003. His annual salary is \$65,000. He draws another \$15,600 annually in military retired pay. His wife makes \$90,000 per year. He seeks reinstatement of the clearance he appears to have held without incident from 1994, when he was in the U.S. military, until May 2010, when his clearance was suspended for loss of jurisdiction.

Applicant owes nearly \$81,000 for tax liens, tax debt, and a delinquent credit account. He also filed for Chapter 13 bankruptcy protection in October 2007, as well as receiving non-judicial punishment (NJP) in 2000 for misuse of a government credit card. He disclosed his delinquent debts and other adverse financial information on his August 2010 clearance application. However, he has not corroborated any of his claimed payments or contacts with state and federal income tax agencies.

Applicant's financial problems began in 2000, when he was serving on active duty in the U.S. military in paygrade E-6. He misused his government credit card, received NJP, and was awarded a reduction-in-rate (RIR) to paygrade E-5. Although Applicant claims he was not barred from re-enlistment, he nevertheless decided to retire at 20-years service when his enlistment ended in September 2002, even though he might have had his earlier rate restored if he had remained in the military without incident for another enlistment. He had acquired technical skills that he was anxious to exploit in the private sector.

Applicant's military home of record was a state that treated its military members as nonresidents if they were not assigned in state or met other defined indicia of residence. Consequently, Applicant did not have to file state income tax returns during the time he was in the military. He filed and paid his Federal income tax returns as required.

When Applicant entered the private sector, he continued to file his Federal income tax returns. However, he did not adjust his tax withholding to cover his tax liability and found himself unable to pay. There is no evidence to show how many years this went on, or what steps, if any, Applicant took to adjust his withholding. In June 2011, the Internal Revenue Service (IRS) filed a \$25,000 tax lien against Applicant (SOR 1.b). Applicant admits a further \$15,000 indebtedness to the IRS (SOR 1.e) and has not provided any documentation to show if this debt is included in, or is in addition to, the lien. He has not provided any communications from the IRS to clarify his indebtedness to the IRS. He claims, without corroboration, to have a pending offer in compromise. He also claims, without corroboration, to have made three \$200 payments to the IRS even though he has not been able to establish a repayment plan.

When Applicant entered the private sector, he began filing state income tax returns in the state where he lived (not his military home of record). However, when he moved to a nearby state and lived there from March 2005 to March 2008, he failed to

ensure that his employer changed his withholding to his new state of residence. Consequently, the state filed a \$40,000 tax lien against Applicant in April 2010. Applicant has not provided any communications from the state to clarify his indebtedness to the state. He claims, without corroboration, that the state lien has been released. He also claims, without corroboration, that he timely filed state income tax returns for the state that he was incorrectly withholding income taxes for, but could not collect those erroneous taxes withheld because of statute of limitations problems.

Applicant married his second wife in October 2004. In April 2005, they bought a home together, in part so his father-in-law (with whom he did not get along) could continue to live in the townhouse she owned before their marriage. Applicant has refinanced both properties to take equity out to pay bills and make needed renovations. The refinancing increased the monthly mortgage payments, which he and his wife then had trouble making. He filed for Chapter 13 bankruptcy protection in October 2007, in part to get the automatic stay of foreclosure action. The plan—which included an IRS debt of \$18,000 (SOR 1.e, 1.b?), a \$30,000 mortgage, \$1,000 in settlement expenses, and a \$790 credit card (SOR 1.d)—was confirmed in February 2008. He moved to have the petition dismissed in June 2008, when he realized that the bankruptcy would not necessarily prevent foreclosure on the properties. At the time the petition was dismissed, he had paid about \$4,100, of which 10% went to trustee expenses and the balance to minimal payments on each of the four accounts. Both properties have been foreclosed upon, but their status is unknown.

Beyond the financial counseling required as a condition of filing for bankruptcy protection, he has not received credit counseling or financial education. The record contains no work or character references.

Policies

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. 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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels deciding 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 credit reports establish his indebtedness. Although some minimal payments were made during the pendency of his Chapter 13 bankruptcy plan, the payments did not continue and none of the alleged debts have been fully paid or resolved.⁴ Applicant’s difficulties with the IRS, due entirely to his failure to adjust his income tax withholding or to make payment arrangements when he was unable to pay his annual tax liability, seem far from resolution. Similarly, his state tax issues remain unresolved. Applicant failed to demonstrate how a family income of over \$170,000 per year was inadequate to keep their finances straight.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and occurred under circumstances that could easily recur.⁵ His tax debts in particular were not due to circumstances beyond his control, and he has not acted responsibly in addressing them.⁶ Aside from his brief detour into a Chapter 13 repayment plan, there is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁷ None of the debts have been paid, much less paid in a timely, good-faith effort.⁸ Further, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

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; (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same . . .

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

Subparagraphs a-f: 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