



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



In the matter of:)	
)	
XXXX, Xxxxxx Xxxxxx)	ISCR Case No. 11-01907
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

05/03/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 28 October 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 1 March 2012, 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 21 March 2012.

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 SOR financial allegations 1.a and 1.c. He denied allegation 1.b, claiming it had been paid in October 2011. He is a 44-year-old engineering manager employed by a U.S. defense contractor since August 2010. He has not previously held an industrial clearance. He has been continuously employed since June 2001.

The SOR alleges, and Government exhibits substantiate, three delinquent accounts totaling over \$51,000. Applicant admits two debts totaling nearly \$34,000. Applicant reported five delinquent debts totaling nearly \$68,000 on his November 2010 clearance application (Item 3), including the three delinquent debts alleged in the SOR. One of the debts he reported is his wife's sole responsibility, and thus does not appear on his credit reports. He stated that he was working with a debt management company to resolve these debts.

During a subject interview with a Government investigator in December 2010, Applicant traced his financial problems to a brief period of unemployment in 2001. However, he was re-employed by June 2001, albeit at a lower salary. Furthermore, he moved to new jobs in January 2006, May 2006, and August 2010, each time with an increase in salary. The more credible explanation for his financial problems, given that the delinquent accounts were opened in 2005-2006, is Applicant's acknowledgment that he and his wife were unable to live within their means. Applicant was finding it harder to meet the minimum monthly payments on his debts.

In August 2009, Applicant hired a credit management company to help him resolve the five debts he later listed on his clearance application. Applicant agreed to pay the company about \$46,000, paid over 45 monthly installments. After deducting its fees, the company would use the accumulated funds to negotiate settlements with each of the creditors. The company estimated that it would be able to settle the outstanding debt at a 50 percent discount, so even with the company's fees Applicant would see substantial savings over the original debt amount. However, the company required the accounts to become delinquent before they could negotiate settlements, so Applicant stopped making payments.

Applicant began making monthly payments by automatic debit in September 2009, and made the first 15 payments as scheduled through November 2010. He made an extra \$5,000 payment in October 2010 so he could reduce his monthly payment beginning December 2010. He has made the required payments through at least January 2012.

In February 2011, the company settled a debt that was not alleged in the SOR. Applicant had disclosed this debt on his clearance application, and it had been the subject of DOHA interrogatories in September 2011 (Item 4). However, a September 2011 credit report (Item 5) confirmed Applicant's claim that the debt had been settled. In September 2011, the company settled SOR debt 1.c (not 1.b as claimed by Applicant in

his Answer). The two settlements were for substantial discounts, but not near the 50 percent projected by the company.

In January 2012, Applicant's account balance with the company was nearly \$4,700. He has 16 monthly payments left on the plan, totaling about \$14,330. With fees deducted, he will have about \$18,000 to settle the nearly \$35,000 balance of the two debts at SOR 1.a and 1.b, plus the nearly \$14,000 owed by his wife that he has included in the plan. The nominal balances of which continue to grow with accumulating interest.

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 that became unmanageable in 2009.⁴

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;

The mitigating factors for financial considerations give Applicant mixed aid. His financial difficulties are both recent and multiple, and the circumstances that caused them are capable of recurring.⁵ His financial problems were not due to circumstances beyond his control, and while Applicant did not move to address his debt particularly quickly, he hired the debt management company before he even took the job that now requires his clearance.⁶ While there is no evidence that Applicant has had any financial counseling as part of the debt management program, he has clearly acted to get his finances under control.⁷ Through the debt management plan, he settled one debt of concern before the SOR was issued, and settled one of the SOR debts just as the SOR was issued. The remaining two SOR debts are included in the debt management plan, as well as one debt that is solely his wife's. Applicant is current on his plan payments, and has made 29 out of the 45 required payments. Although much progress remains, substantial progress has already been made.⁸ The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.⁹ Applicant's debt management plan is such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

Formal Findings

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

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.

⁹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

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