



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



In the matter of:)	
)	
XXXX, Xxxxxx Xxxxx)	ISCR Case No. 11-01897
)	
Applicant for Security Clearance)	

Appearances

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

02/24/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 20 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 3 January 2012, and I convened a hearing 1 February 2012. DOHA received the transcript (Tr.) 9 February 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-K.

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.a and 1.b. He denied SOR 1.a because he did not wilfully fail to file his federal income tax returns, and he denied SOR 1.b because he has a legitimate dispute with the creditor about whether he owes the debt alleged. He is a 47-year-old electrical engineer who was sponsored for a clearance by a defense contractor since July 2010. He was employed doing contract work for another contractor from August 2010 to August 2011, but has been unemployed since. He was also unemployed from January 2008 to July 2010. He had a clearance in the mid-1990s, but has not held one recently.

The SOR alleges, and Government exhibits document, 14 delinquent debts totaling nearly \$127,000. Applicant admits 12 debts totaling nearly \$106,000. Applicant's failed business, which he shuttered in 2007, accounts for over \$102,000 (SOR debts 1.c, 1.e, 1.g, 1.i-j, and 1.n). Medical debts arising out of Applicant's December 2007 accident which shattered his ankle account for another \$11,600 (SOR debts 1.b, 1.d, 1.k, and 1.m). Applicant owes the Internal Revenue Service (IRS) \$11,446 for past-due income taxes (SOR 1.a). The three remaining debts total less than \$2,000 (SOR debts 1.f, 1.h, and 1.l). Except for the IRS debt, Applicant has made no payments on his delinquent debts, and has made no repayment arrangements.

Applicant has been the victim of a series of very unfortunate events since early 2007. Before 2007, Applicant had no financial problems. He had retired from a career in telecommunications and was running a successful machine shop. However, his marriage was deteriorating. About February 2007, they agreed to divorce, and Applicant asked his wife to give him a few months to liquidate the assets of the company. She initially agreed, but then closed all their joint accounts, effectively ending his cash flow. In April 2007, she initiated a domestic altercation with Applicant who was on probation for some traffic tickets that were almost resolved. The police were called and the responding officer viewed Applicant's involvement in the altercation as a violation of his probation. The officer arrested both Applicant and his wife, and they spent four weeks in jail because the arresting officer went out of town and none of the other officers were prepared to take the case before the judge. When the case was finally brought before the judge, the charges were dismissed. Meantime, some of Applicant's employees stole equipment from the company and disappeared. Four days after his release from jail, his landlord locked Applicant's warehouses for non-payment of rent.

Applicant's divorce was very contentious, and by the time it was final in August 2007, he had lost essentially everything. About that time, he discovered that although he had given his ex-wife his tax documents for her to prepare their income tax returns and submit as joint returns, she was filing separately. Applicant could not remember if he had ever signed joint returns, because he always had company tax returns (which he had professionally prepared) to sign. To add injury to insult, he shattered his ankle in mid-December 2007. He had no unemployment benefits, because he had been self-employed. He had no health insurance. His mother invited him to come live with her so

she could oversee his recovery and write a book they had often discussed writing. Applicant moved back home in January 2008. Ten days after he moved in, she died.

Between December 2007 and mid-January 2008, Applicant tried unsuccessfully to reset and cast his ankle several times. In late January 2008, he was accepted at a local free clinic and referred to an orthopedic surgeon and had surgery on his ankle. The recovery was long and painful. He had a second ankle surgery in August 2008 to remove pins and plates used to piece his ankle together. He was still unemployed, but money from his mother's estate had begun to flow and he was able to meet his living expenses.

The death of Applicant's mother took its toll on Applicant and his older brother. His brother was so distraught that he took it out physically on Applicant. This depressed Applicant. Applicant's brother was killed in late August 2008, when a lawn tractor he was working on fell off its jack and crushed him. Applicant was even more depressed.

By September 2008, Applicant was able to walk in a normal shoe, and between September 2008 and January 2010, he performed manual labor to supplement his funds. In January 2010, he began to focus full time on getting back into his professional career. It took him seven months to get the conditional offer of employment that requires this clearance, and eight months before he got the contract job that lasted until August 2011.

After Applicant regained full-time employment in August 2010, he undertook two important actions: he hired a tax accountant to address his delinquent state and federal income tax returns and he set aside money from his current salary to tide him over if his contract employment ended without follow-on employment. In January 2011, he entered into a repayment plan with the IRS. The repayment plan (AE D) required him to begin payments in February 2011, starting with a \$105 installment-fee payment and \$50 per month payments through January 2012, at which point his monthly payment would increase to \$283. Applicant agreed that the IRS would apply any income tax refunds to his outstanding balance, and any income tax refunds so applied would not count as his monthly payment. In April 2011, the IRS applied a \$5,400 refund for 2010 (covering five months employment) to his outstanding balance. Applicant has made his \$50 monthly payments through January 2012. Those payments are not enough to cover the ongoing penalties and interest, so his outstanding balance continues to grow. The 2010 offset reduced his outstanding balance to the \$11,141 alleged in the SOR (which has now grown to \$11,446). However, Applicant and his tax accountant anticipate that his refund for 2011 (covering seven months employment) will be enough to satisfy most, if not all, his remaining liability.

Applicant's dispute with the hospital over its \$10,000 judgment obtained in October 2009 revolves around Applicant's claim that he received the medical services when he was indigent and qualified for free medical services (AE B). However, when Applicant inherited money from his mother, the hospital sought payment for the services rendered. Applicant has been in contact with the hospital's attorney (AE C) to resolve

the issue, with the likely result that the hospital may waive the charges or accept a substantially discounted fee.

Applicant's plan for resolving the remaining 12 debts hinges on Applicant's obtaining regular employment in the near future and on the final resolution of his mother's estate, which is currently in litigation. Applicant's brother was survived by two children, each of whom is entitled to 25% of his mother's remaining tangible estate, which consists of his mother's house and two automobiles. The litigation involves whether Applicant should be charged for the fair market rental value of his living in the house since his mother's death. Regardless of the resolution of the litigation, Applicant's half interest in the fair market value of the house alone is enough to pay his remaining debts. If Applicant obtains regular employment, he has a lender who will let him borrow against his equity in the estate. If he does not obtain regular employment, he will have to wait until the litigation is resolved and the house can be sold. Applicant has been actively seeking employment since before his contract employment ended (AE J).

Applicant has not received any financial counseling, and does not have a budget for his finances while he remains unemployed. He has favorable 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

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. Applicant has a history of financial problems dating to at least 2007. Even under the most favorable analysis of his financial situation, he has over \$106,000 in unresolved debt.⁴ He has been in contact with only two of his 14 creditors.

Applicant does not fully meet any mitigating factors for financial considerations, and the partial application of the mitigating conditions is insufficient to overcome the adverse implications of his current financial situation. His financial difficulties are recent and ongoing, but also under a convergence of circumstances unlikely to recur.⁵ Similarly, the circumstances were largely beyond his control, but overall, Applicant has not acted responsibly in addressing his debts.⁶ While he has resolved, or nearly resolved, two debts totaling just over \$21,000, his plans for resolving the remaining 12 debts are contingent on either resolving his mother's estate or obtaining regular employment. He has been making regular payments to the IRS for nearly a year, and his expected 2011 refund should resolve most of the remaining balance. He has a legitimate basis for disputing one of the medical bills (SOR 1.b).⁷ However, he has taken no action to address even the five smallest debts (ranging from \$200 to \$1,100)⁸ or to demonstrate that his financial problems are headed for resolution.⁹ Even assuming that Applicant has done everything he reasonably could with the income he has had since August 2010, further progress is too contingent on unpredictable events. These events are too open ended to mitigate the security concerns raised by his financial problems. Finally, the record lacks sufficient information upon which to base a "whole-person" analysis. Applicant has a long term plan, but very little short term progress. Resolution of his mother's estate has neither a fixed nor reasonably foreseeable date. Accordingly, I conclude Guideline F against Applicant.

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;

⁷¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue;

⁸¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁹¶ 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;

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-b: For Applicant

Subparagraphs c-n: 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