



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



In the matter of:)	
)	
XXXXXXXX, Xxxxxx Xxxxxx, Xxx)	ISCR Case No. 11-05659
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

06/29/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 17 February 2012, 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 19 April 2012, and I convened a hearing 17 May 2012. DOHA received the transcript (Tr.) 22 May 2012.

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

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 security officer who was sponsored for a clearance by a defense contractor since December 2010. He is currently working part time for his employer on another contract that does not require a clearance. He has served in the reserve forces of the U.S. military for over 19 years, during which time he has held a clearance. That clearance is not currently under review by the military department concerned.

The SOR alleges, Government exhibits document, and Applicant admits, 16 delinquent debts totaling over \$89,000. The debts consist of a \$34,000 education loan; a \$5,500 federal tax lien for tax years 2004, 2005, 2009, and 2010; two repossessed automobiles totaling \$25,000; four medical debts totaling \$1,000; \$23,000 credit card debt; and a \$540 judgment.

The record reflects that SOR debt 1.l is a duplicate of debt 1.d and SOR debt 1.k is a duplicate of 1.h. Accordingly, I find debts 1.l and 1.k for Applicant. However, the record also reflects that the education loan at SOR 1.g is actually two loans of \$34,000 for a total of \$68,000. Consequently, 14 delinquent debts totaling over \$109,000 are at issue.

GE 2 reveals that Applicant received a settlement offer from the creditor on SOR debt 1.j in November 2011, to settle the \$250 debt for \$25; he received a settlement offer from the creditor on SOR debt 1.n in December 2011 to settle what was then a \$935 debt for a single payment of \$581, six monthly payments of \$107, or 12 monthly payments of \$58; and he reached an agreement to repay his federal income tax lien in November 2011, to begin \$285 monthly payments in December 2011. However, Applicant did not begin the repayments as scheduled and has made no payments under the plan. The Internal Revenue Service (IRS) has seized his income tax refunds for the last five years, including 2011. Applicant was unable to accept either of the other two settlement offers when they were made, but settled debt 1.j in June 2012, and agreed to settle SOR debt 1.n—now grown to \$1,188—by making six equal monthly payments totaling \$700 beginning in June 2012 (AE D). Otherwise, Applicant has made no payments on any of his debts. He documented that his two education loans now total over \$69,000 (AE D). Applicant tried to get his education loans into forbearance or rehabilitation, but cannot make the payments required to qualify for either status.

Applicant's financial problems resulted from a number of circumstances beyond his control. In 2001, his wife had the first of 10 surgeries she experienced from 2001 to 2010. As a result of these surgeries, she lost her job in January 2006, and has not worked since. Some of her bills were covered by the military health plan, and some by Medicare, but she has recently lost the military coverage. Applicant has worked second jobs to try to keep up with expenses, but he has had to give those jobs up whenever his wife was hospitalized. Applicant's wife receives some disability income.

In addition to his wife's medical issues, Applicant must contend with expenses related to his diabetic son, his disabled daughter, and his wife's grandfather—who suffers from Parkinson's disease, dementia, and schizophrenia. Complicating his finances further, Applicant has experienced problems with his military pay.

Applicant sought financial counseling through his military chain-of-command (AE A) without any concrete results to date. They have recommended that Applicant consider bankruptcy protection (Tr. 47-48) and he consulted a bankruptcy attorney two weeks before the hearing (Tr. 107).

Applicant has not had any military service since February 2011, and has not had full-time employment since March 2012. His work and character references, both military and civilian, consider him honest and trustworthy (AE B). He also had favorable recommendations for an officer-commissioning program (AE C). His military supervisor (Tr. 60) and his civilian supervisor (Tr. 70) also consider him honest and trustworthy and recommend him for his clearance.

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 mitigate the security concerns. Applicant has a history of financial problems dating to at least 2001. Even under the most favorable analysis of his financial situation, he has over \$109,000 in unresolved debt.⁴ He has been in contact with only three of his 14 creditors, and resolved only one small debt with a payment of \$25.

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 likely to recur.⁵ On the other hand, the circumstances were largely beyond his control, and overall, Applicant has acted responsibly in addressing his debts in the sense that his progress has been inhibited by his lack of family income.⁶ However, aside from SOR debt 1.j, he has taken no action to address even the six smallest debts (ranging from \$25 to \$500)⁷ or to demonstrate that his financial problems are headed for resolution.⁸ Even assuming that Applicant has done everything he reasonably could with the income he has had, or obtains a bankruptcy discharge for his eligible debts,⁹ further progress is too contingent on unpredictable events. These events are too open ended to mitigate the security concerns raised by his financial problems. He has not asserted any legitimate basis for disputing any of his debts.¹⁰ Finally, while his “whole-person” record is substantial, it is not enough to overcome the magnitude the security concerns raised by his unresolved, or unresolvable, indebtedness. 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(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁸¶ 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;

⁹Which would not include his nearly \$75,000 and growing federal debt (education loans and federal tax lien).

¹⁰¶ 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;

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-h:	Against Applicant
Subparagraph i:	For Applicant
Subparagraph j:	Against Applicant
Subparagraph k:	For Applicant
Subparagraphs l-p:	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