



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



In the matter of:)	
)	
XXXXX, XXXXXXX XXXXXXX)	ISCR Case No. 11-06659
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 9 November 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) listing security concerns under Guidelines F, Financial Considerations and E, Personal Conduct.² Applicant timely answered the SOR, requesting a decision without hearing. The record in this case closed 9 April 2012, the day Department Counsel noted no objection to Applicant's response to the Government's File of Relevant Material (FORM). DOHA assigned the case to me 17 April 2012.

¹Consisting of the FORM, Items 1-12, and the Applicant's response to the FORM, which contains a great deal of material that duplicates information submitted by Applicant during his background investigation and in his answer to the SOR.

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, but denied the falsification allegations. He is a 52-year-old senior systems engineer employed by a defense contractor since October 1999. He seeks to retain the security clearance he has held without incident since April 1983. He has been married since September 2000, and he and his wife have no children. However, he has been the legal guardian of his nephew since his sister died in about 1992. He has approximately \$2,500 positive monthly cash flow, not including payments on his delinquent debts. The record does not show if his wife is employed, or what her contribution to family income is.

In fall 2007, Applicant's nephew entered college at a prestigious, but expensive, out-of-state college, located in an urban setting in one of most expensive cities in the U.S. The out-of-state tuition and fees ran about \$60,000 per year. Applicant's nephew paid his college expenses with a combination of scholarships, federal grants, federal loans, and federally-guaranteed loans, both subsidized and unsubsidized. The record was unclear whether Applicant co-signed any of those for his nephew. However, his nephew lived off-campus, and Applicant paid his living expenses, running about \$1,800 per month. The living expenses appear to be the full limit of Applicant's financial contribution to his nephew's college education.

According to Applicant, as guardian, he was not eligible for the kinds of parent loans that are otherwise available for dependent children.³ Consequently, Applicant made up the short-fall through credit cards. Applicant has not stated whether he pursued other educational loans or other kinds of loans to fund his nephew's education.

In December 2010, Applicant's nephew was preparing to enter his last semester in college. He needed only two more courses to have enough credits to graduate college, so that is all he registered for.⁴ The record does not show whether the nephew communicated this information to Applicant at the time. In December 2010, the school notified Applicant that it had reduced the nephew's financial aid award by some \$4,000 for the spring 2011 semester because the two courses he had registered for made him a part-time student, and thus ineligible for the balance of his financial aid package.

The \$4,000 payment was due in early January 2011. Applicant did not have enough remaining credit limit on any of his credit cards, or combination of cards, to pay the lump sum due. The record is not clear whether Applicant tried to get any other credit to pay the balance. Applicant stopped making payments on the 16 delinquent accounts

³This belief appears to be incorrect. Direct parent loans are available to biological parents, adoptive parents, and step-parents of dependent students enrolled at least half time at an eligible school. See, www.studentaid.ed.gov. Federally-insured parent loans are expressly available to legal guardians. See, www.parentplusloan.com.

⁴I infer from Applicant's statement that his nephew needed two courses to graduate that he needed six more credit hours to have enough credits to graduate. A full-time student must take a minimum of 12 credit hours per semester, meaning the nephew needed two more three-credit courses to retain full time status.

alleged in the SOR, eventually totaling over \$64,000. Although his nephew graduated in May 2011, Applicant continued to provide his living expenses after graduation while the nephew worked part-time. He returned home in July 2011.

In his late-February 2011 clearance application (Item 5), Applicant failed to disclose any history of financial problems. During a March 2011 subject interview (Item 6), Applicant claimed that he omitted his financial history because he was unaware of the status of his accounts. He later claimed that he answered the financial questions in the negative because the accounts he had stopped paying did not technically fall within the language of the questions. However, Applicant's account documentation shows that at the time he completed his clearance application, the seven accounts he allegedly failed to disclose had significant amounts past due and had aggregate minimum payments of \$7,200 that Applicant could not pay.

Applicant's response to the FORM documents recent communications with all the creditors alleged in the SOR, as well as some token payments since spring 2011. He has documented one savings account with about \$10,000 in it. He claims \$2,500 positive monthly cash flow, but claims to have committed to \$4,000 monthly debt repayment plans, that will liquidate his delinquent debts in 36-42 months. Aside from the money in his savings account, he has not demonstrated where the additional money will come from. He had provided no work or character references.

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 guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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, 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.⁵

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant’s financial problems are the direct result of poor choices he made in December 2010, if not before.⁶

Setting aside for a moment the fact that Applicant apparently made no plans for his nephew’s college education during the 15 years between his sister’s death and his nephew’s entry into college in fall 2007, and did not pursue alternative educational loans that may have been available to him as his nephew’s legal guardian, the fact remains that the nephew could have avoided this financial issue entirely by the simple expedient of taking two more classes his last semester in college. Further, while Applicant’s commitment to educating his nephew is laudable, Applicant was not required to give his nephew carte blanche to attend any school, anywhere, at any expense. Many parents or guardians exercise the good judgment to limit their children’s education choices to what is affordable. Finally, the vast array of financing sources Applicant and his nephew used to fund the direct college expenses suggests they were both well versed in the mechanics of student aid. Applicant has not satisfactorily explained his inability or unwillingness to obtain other credit for the final \$4,000, or why he did not hold his nephew responsible for obtaining the additional funding, particularly where his actions caused the drop in financial aid.

Further, even assuming the reasonableness of Applicant’s decision to stop paying his creditors in December 2010 to pay his nephew’s final college bill, Applicant has not adequately explained why he was unable to resume those payments any sooner than he did. Based on his documentation, Applicant should have been able to pay the tuition bill with at most two months’ of foregone payments. Yet, Applicant stopped paying long enough (or made only token payments) that seven accounts were charged off and another eight accounts became more than 120 days past due.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, although his nephew has graduated, so that circumstance is unlikely to recur.⁷ As noted above, the debts did not occur under circumstances beyond his control, and he has not acted responsibly in addressing his debts, apparently waiting well beyond the period of financial need before resuming

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁷¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

payments to his creditors.⁸ He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control. The plan he proposed to bring them under control will take 36-42 months to complete, and has an uncovered shortfall of \$1,500 per month.⁹ Thus, he cannot be considered to be making a good-faith effort to satisfy the debts.¹⁰ Accordingly, I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicants are expected to give “full, frank, and truthful”¹¹ answers during the clearance process. Although Applicant failed to report any financial problems, he had stopped paying several accounts in December 2010, and was facing minimum monthly payments of nearly \$7,200 in March 2011 on the seven accounts allegedly falsified. This conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹² Applicant’s assertion that his answers to the financial questions on his clearance application were technically true cannot hide the fact that they were neither full nor frank. Further, the clearance application provides an opportunity for general comments to expand other answers. Applicant has been applying for clearances for over 30 years and knows the requirements for complete candor.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information until his subject interview.¹³ Applicant’s failure to disclose this information demonstrates a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant’s willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information.

⁸¶ 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;

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;

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

¹¹Directive, ¶ 6.2.

¹²¶ 16(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

¹³¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. Accordingly, I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-p:	Against Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-b:	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