



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



In the matter of:)	
)	
XXXXX, XXXXXXXXXXXXX XXXXXXXN)	ISCR Case No. 11-06851
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: David P. Price, Esquire

06/07/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 23 November 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E, Financial Considerations and Personal Conduct.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 2 March 2012, and I convened a hearing 16 March 2012. DOHA received the transcript (Tr.) 24 March 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-D. Exhibits C and D were timely received post-hearing.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 allegations. He is a 34-year-old construction surveillance technician employed by a defense contractor since June 2006. He seeks to retain the security clearance he held while in the military, and on an interim basis until the SOR was issued.

The SOR alleges, Government exhibits confirm, and Applicant admits, a \$2,900 state income tax lien filed against Applicant in August 2011 (SOR 1.a) and a \$3,200 remaining collection balance on a company travel card that was originally over \$15,000 (SOR 1.b). Applicant's Answer reflects that the income tax lien was paid and released in December 2011 (Encl. 1, 2) and the final \$3,200 balance on the travel card was paid in November 2011 (Encl. 3).

SOR debt 1.b arose when Applicant improperly used his company-issued travel card for personal expenses. The main personal expense he charged was education materials. At the time he made the personal charges, he was unaware that company policy—actually, card issuer policy—prohibited his personal use of the card. He was also unaware that the card was a charge card and not a credit card, meaning that the entire balance had to be paid off monthly and was not a revolving balance with minimum monthly payments. The company did not provide employees with any training about use of the card. The company sponsored an employee for a card, which was issued directly to the employee along with the usual brochure that nobody reads. Applicant was not the only company employee to run afoul of the card limitations.

When Applicant realized that he was required to pay off the entire balance monthly and that he was unable to do so, he reported the situation to his company manager. In June 2010 (Answer, Encl. 5), Applicant's manager formally reprimanded him, and Applicant formally agreed to a bi-weekly repayment plan. In addition, Applicant's ongoing performance was to be evaluated and reviewed by August 2010. Applicant met the company's requirements, and the manager who reprimanded him recommends him for his clearance (Answer, Encl. 6; Tr. 23-46). His manager had previously given him an excellent employment evaluation (Answer, Encl. 8). Similarly, his supervisor on a different project was aware of the travel card issue, but nevertheless recommended Applicant to retain his clearance (Answer, Encl. 7; Tr. 48-60).

Applicant's tax lien arose out of a state income tax liability Applicant incurred in 2008. Applicant had been deployed overseas, which complicated his tax situation. He had entered into a repayment plan with the state and was making payments until 2010 when the company travel card issue arose. As a result of focusing on that debt, Applicant fell behind making his payments to the state. However, he was unaware the state had filed a tax lien until he received the SOR.

Applicant's 11 work and character references (AE A, D) consider him honest and trustworthy, and they recommend him to retain his clearance. They are aware of his financial issues and consider those issues out of character for him.

Applicant's March 2012 credit reports (AE C, D) show favorable account entries, except for the two debts alleged in the SOR. Those entries reflect past-due accounts that are now paid. Applicant now has significant positive monthly cash flow, and recently qualified for a mortgage and bought a home (AE D). He has about \$6,000 in a savings account. He and his wife have a budget that accounts for both his regular income and his increased income when he is deployed.

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, 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 experienced minor financial problems when he improperly, but unwittingly, used the company travel card for personal expenses and while dealing with that debt, fell behind on his state tax repayment schedule.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;

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they were not frequent and the circumstances under which they occurred are unlikely to recur.⁵ To the extent that using the travel card for personal expense was improper, the debt was not due to circumstances beyond his control. To the extent that the travel card was a charge card and not a revolving credit card, the debt was due to a circumstance beyond his control. In either case, he acted responsibly in addressing his debts.⁶ When he realized that the entire balance was due and he was unable to pay it, he informed his company and made arrangements to pay the bill. His progress was such that by the time the SOR was issued, he owed only about \$3,200 of the original \$15,000 balance. Similarly, while his tax repayments fell through the cracks briefly while he was addressing the travel card debt, and he was unaware that the state had filed a tax lien, once he became aware of the lien, he acted quickly to resolve it. While Applicant and his wife have not received financial counseling, they otherwise brought the problem under control.⁷ Having substantially addressed all his known delinquent debt before the SOR was issued, and having addressed the unknown lien once he became aware of it, the timing of the payments constitutes a good-faith effort to satisfy his debts.⁸

The Government established a case for disqualification under Guideline E. Applicant's improper, albeit unwitting, use of his company travel card suggests that he does not follow rules and regulations.⁹ However, I conclude Applicant mitigated the security concerns.

The weight of the evidence is that Applicant is honest and trustworthy and follows rules and regulations. Further, once he realized his mistake in using the company travel card, he reported the situation to his company management. The company imposed discipline on him, but kept him employed. Thus counseled, his employment record

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.

⁹¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

continued its otherwise excellent progression. Consequently, this conduct is unlikely to recur.¹⁰ Accordingly, I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-b:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph a:	For Applicant

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

¹⁰¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur;