



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



In the matter of:)	
)	
XXXXXX, Xxxxx Xxxxxx)	ISCR Case No. 11-07194
)	
Applicant for Security Clearance)	

Appearances

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

11/28/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 22 May 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 1 August 2012, and I convened a hearing 31 August 2012. DOHA received the transcript (Tr.) 11 September 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, 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 allegations 1.c-1.f. He denied allegations 1.a and 1.b, which are debts he paid. He is a 50-year-old senior associate employed by a defense contractor since October 2010. He held a clearance while serving in the military from May 1987 to May 1996. He appears to have been granted an industrial clearance in August 1999, had it renewed in 2004, and had it reinstated in January 2009. He married in July 1994 and divorced in March 2007. He and his ex-wife have no children together.

Applicant has an extensive history of financial problems, marked by two Chapter 7 bankruptcy discharges. Applicant first filed a Chapter 7 bankruptcy petition in January 1996. In May 1996, he was discharged from about \$20,000 debt (SOR 1.e). In an August 1998 subject interview, Applicant attributed his financial problems to having overextended himself on his credit cards and to his unemployment. However, at the time he filed for bankruptcy, he was still serving in the military reserve. Nevertheless, his income had dropped substantially in 1995, after he left active-duty military service, and he was using credit cards to meet his living expenses.

Applicant filed for Chapter 7 bankruptcy protection a second time in September 2008. He was discharged from \$480,000 in dischargeable debt in January 2009 (SOR 1.f). Applicant attributes this bankruptcy to his March 2007 divorce and a period of unemployment that began in April 2008.

Applicant has a \$19,000 federal tax lien (SOR 1.d) and a \$4,600 state tax lien (SOR 1.c) because he failed to pay income taxes on an early withdrawal from a retirement fund in 2006. He paid two medical bills totaling \$240 (SOR 1.a-1.b) in April 2012. He had not been aware of them before his most recent background investigation.

Applicant attended college on a Reserve Officer Training Corps scholarship. Upon graduating in May 1987, he began serving his active-duty military obligation. Applicant's chronology is not particularly well documented, but his active-duty obligation was eight years, which means he would have been released to reserve status in about May 1995. Applicant's May 2012 Social Security Administration (SSA) statement (Answer) reflects \$4,300 taxable earnings for 1995, consistent with his leaving active duty then.

Applicant experienced periods of underemployment and unemployment from May 1995 to March 1998. He was laid off from a job in March 1997, was self-employed from April-July 1997, and was fired from a job in February 1998 because he was not qualified for the position (GE 4). However, in March 1998, he began an extended period of full-time employment.

In March 1998, Applicant was hired as the business development manager for an information technology company, and saw a steady rise in his income. By 2000, he was making a six-figure salary, earning over \$300,000 in 2000-2001. He was appointed a director of the company, and his income soared, largely due to sales commissions he

earned. He earned over \$450,000 in 2002, over \$600,000 in 2003, and over \$620,000 in 2004, a total of nearly two million dollars. Applicant and his wife enjoyed their good fortune. They bought a house together. Applicant bought a luxury car, two luxury motorcycles, two boats, an all-terrain vehicle, and several trailers, paying cash. He also put \$40,000 in a retirement fund.

Although he was earning high amounts, the work schedule required to earn those commissions took its toll on Applicant. In January 2005, Applicant decided to try his entrepreneurial skills. He took a two-year job as chief executive officer (CEO) of a start-up company, agreeing with the two owners that he would leave the company if he could not turn a profit within two years. Applicant earned \$455,000 in 2005, but by 2006, the company's finances were declining. Applicant cut his salary to about \$134,000, in addition to lending the company \$25,000 to make payroll. In accord with his agreement, Applicant left the company in January 2007.

Meanwhile, Applicant's marriage had begun to deteriorate. In December 2005, Applicant moved out of the marital home and bought a historic home into which he put about \$200,000 of renovations.³ The purchase price plus renovations left him with a \$3,000 monthly mortgage payment. The property settlement with his ex-wife gave her the marital home; he got the vehicles and trailers, and paid all the attorneys' fees. Sometime in 2006, he took \$40,000 out of his retirement fund. He paid the early-withdrawal fee, but did not include the distribution as income on his 2006 taxes.

After Applicant left his CEO job, he was quickly rehired as a program manager at an annual salary of \$150,000. However, he was fired from this job in March 2008, because the company owner wanted Applicant to work from the office five days per week, and Applicant wanted to work from home two days per week because of the long commute between home and office. Consequently, Applicant only earned about \$93,000 in 2007-2008. He remained unemployed until December 2008, precipitating his September 2008 bankruptcy filing.

In February 2009, the Internal Revenue Service (IRS) filed a \$19,308 tax lien on Applicant for unpaid 2006 taxes. In September 2009, his state tax division filed a \$4,623 tax lien for unpaid 2006 state taxes. In March 2009, he hired a tax resolution company to pursue an offer in compromise (OIC) with the IRS. Between March and July 2009, Applicant paid \$4,800 for the company's services. The services were never delivered, and in August 2011, Applicant revoked the power of attorney he had given the company and began dealing directly with the IRS. He also contacted the state tax division to arrange a repayment plan. Several states' attorneys-general sued the tax resolution company for deceptive practices. At least one of the states obtained a civil judgment against the company, whereupon it filed for bankruptcy in 2012.

³Applicant variously testified that he moved out of the marital home in December 2005 and December 2006. However, the divorce was contentious and finalized in March 2007, suggesting that the move was in December 2005.

From December 2008 to May 2010, Applicant was employed as a senior infrastructure architect, and earned about \$207,000 in 2009-2010. The job ended in May 2010, when the contract he was working on expired, and he remained unemployed until obtaining his current job.

Once in his current job, Applicant began pursuing repayment plans on his IRS and state tax liens in August 2011. By December 2011, Applicant had established a repayment plan with the IRS, and had paid the necessary fees for establishing the plan. He was supposed to start \$300 monthly payments in December 2011. However, he was laid off in December 2011 because his interim clearance had been revoked due to his financial problems, and the company did not have any unclassified contracts for Applicant to work on.

Applicant was rehired by his company in March 2012 to work on unclassified contracts, and he re-contacted both the IRS and the state tax division about reestablishing repayment plans. He claims to be paying the IRS \$300 monthly and claims to be paying the state \$200 monthly. However, he has not documented the terms of the agreements, or any of the claimed monthly payments. The IRS seized his income tax refunds for 2010 and 2011 and applied those amounts (totaling \$2,759) to his 2006 tax liability. Notwithstanding those payments, Applicant's IRS tax liability has risen to over \$21,000 including interest and penalties. The IRS lien remains on his credit report, and under IRS policy the lien cannot be removed from his credit report until he enters into a direct debit agreement with the IRS. Applicant has provided no documentation that the IRS reinstated the December 2011 agreement in March 2012, or that Applicant has made the direct debit payments as required. There is no evidence of the current value of the state tax liability.

Since Applicant left his CEO job in January 2007, his employment has been more than usually subject to the vagaries of employment in federal contracting. He is not a regular full-time employee, but remains employed only as long his company has contracts that he can work on. If the contract expires or is not renewed, or his clearance is revoked and the company has no unclassified contracts for him to work on, he loses his job. Applicant has experienced all these circumstances since 2007.

Applicant received financial counseling as required for his 2008 bankruptcy, and his current budget shows enough positive monthly cash flow to make the claimed, but uncorroborated, tax payments. His character and work references (AE D) consider him honest and trustworthy, and recommend him for reinstatement of 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.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant's tax liability for state and federal taxes exceeds \$26,000.⁵ Moreover, Applicant has a January 2009 bankruptcy discharge that seems as much the result of his financial irresponsibility as his divorce. Between tax years 2000 and 2006, Applicant earned over 2.6 million dollars. But his spending over that period was, if not profligate, at least imprudent. He appears to have saved little beyond the \$40,000 he put in a retirement account, but later prematurely withdrew. If he was not over-leveraged, he was at least illiquid.

The mitigating factors for financial considerations provide mixed help to Applicant. His financial difficulties are recent, not infrequent, and because of the variability of his employment, the circumstances under which his financial problems occurred are likely to recur.⁶ Applicant's divorce is a circumstance beyond his control, but having little in financial reserves is not. Nor is buying and renovating a historic home, resulting in a \$3,000 monthly mortgage while your divorce is pending. Finally, his

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; (f) financial problems that are linked to . . . gambling problems . . . ; (l) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

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

April 2008 dismissal—the immediate precipitant of his 2009 bankruptcy—was completely within his power to prevent, by the simple expedient of coming to work when the owner wanted him to. Consequently, he cannot be considered to have acted responsibly in addressing his debts under the circumstances because the debts and resulting bankruptcy were due to his own conduct.⁷ Further, while his 2011 efforts to make repayment plans on his state and federal tax debt shows some good faith in attempting to resolve those debts, his failure to document any follow-through after his re-employment in March 2012 undercuts his claim to rehabilitation.⁸

The concern with Applicant is that while he credibly states his intent to resolve these debts, his financial situation remains in flux. His employment fluctuates. He appears able to address his delinquent taxes, but has not documented repayment plans with a history of payments. Thus, there are too many unknowns to conclude that his financial problems are headed for resolution.⁹ He has undertaken the minimum financial counseling required by his bankruptcy filing, and has a budget that provides for the tax payments he has claimed. But the lack of demonstrated progress fails to show a clear path for resolving his delinquent debts. Without such a path, I cannot conclude that financial problems are unlikely to recur. Further, while he has favorable character and employment records, those records are insufficient to establish a “whole-person” analysis supporting a favorable clearance action. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	For Applicant
Subparagraphs c-f:	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

⁷¶ 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;

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

⁹S¶ 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;