



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



In the matter of:)	
)	
XXXXXXXX, Xxxx Xxxxxxxxxx)	ISCR Case No. 11-07331
)	
Applicant for Security Clearance)	

Appearances

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

12/13/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 22 June 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 27 July 2012, and I convened a hearing 21 August 2012. DOHA received the transcript 29 August 2012.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibit (AE A). AE A 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 financial allegations of SOR 1.a and 1.e-1.g; he denied the financial allegations of SOR 1.b-1.d. He admitted the falsification allegations of SOR 2.a-1.d. He is a 43-year-old truck driver employed by a defense contractor since March 2011. He has not previously held a clearance. He was married briefly in the 1980s and has two adult children.

In his March 2011 clearance application (GE 1), Applicant answered “no” to a series of questions requiring him to disclose any recent financial problems. At the time, Applicant had been underemployed for some time, and had been looking for a better job since the end of 2008. He knew that he had financial problems, but feared he would not keep his job or get his clearance if he disclosed them (Tr. 65-68). Consequently, Applicant failed to disclose that he had not filed his state and Federal income tax returns as required (SOR 2.a), that he had a lien placed on his property for not paying taxes (SOR 2.b), that he had delinquent Federal debt (SOR 2.c), and that he had been 180-days delinquent on some debts, and was currently 90-days delinquent on others (SOR 2.d).

Applicant failed to file his state income tax returns for tax years 2007 through 2010 (SOR 1.a) and failed to file his Federal income tax returns for 2007, 2008, and 2010 (SOR 1.b). Consequently, Applicant owed about \$11,000 unpaid state income taxes (SOR 1.c), had an October 2010 Federal tax lien of over \$9,000 (SOR 1.e), and still owed about \$5,000 unpaid Federal income taxes (SOR 1.f). He also owed about \$2,200 unpaid state property taxes (SOR 1.d)³ and was about \$7,000 in arrears on his first mortgage (SOR 1.g).

From June 1998 to February 2011, Applicant ran his own for-hire trucking company. He was the sole owner and employee of the company; his equipment consisted of one dump truck. The work was seasonal: lots of work in spring, summer, and fall; very little work during the winter. He supplemented his income by renting rooms in his house. He appears to have not made quarterly payments to the Internal Revenue Service (IRS) as required, which would have lessened the potential impact on the amount of Federal income tax liability owed every year.

By 2007, Applicant’s finances began to tighten up. In addition to the normal winter lull in work, the overall decline in the economy was reducing the amount of work during the busy seasons. His finances were further complicated by child-support issues with his ex-wife as well as a custody battle over his minor daughter.

Applicant filed his 2007 Federal income tax return on time, but was unable to pay his nearly \$8,500 tax liability, and made no arrangements with the IRS to begin a payment plan. He did not file his 2007 state income tax return at all because he wanted

³However, Applicant’s documents (GE 2) show that Applicant had paid that debt in February 2012, before the SOR was issued.

to resolve his IRS debt before addressing the state income tax. Applicant filed his 2008 Federal income tax return in October 2009 (apparently with an extension of time to file from the IRS), but was again unable to pay his nearly \$3,200 tax liability, and again made no arrangements with the IRS to begin a payment plan. He again did not file his 2008 state income tax return at all because he wanted to resolve his IRS debt before addressing the state income tax. In all, Applicant failed to file his state income tax returns for tax years 2007, 2008, 2009, and 2010.

In October 2010, the IRS filed a nearly \$9,200 income tax lien on Applicant, which finally spurred him to contact the IRS to address his tax debts. In December 2010, the IRS accepted Applicant's proposed installment agreement, with the first \$153-per-month payment due by mid-January 2011. In addition, in December 2010, the IRS seized Applicant's 2009 income tax refund (on a return timely filed, with extension, in August 2010). In May 2012, the IRS also seized Applicant's 2011 income tax refund. Applicant owed taxes for 2010, but the record does not show if Applicant paid that debt or not. Nor are there any records showing any IRS action for 2010.

Applicant did not begin making payments as required in January 2011, but apparently had his 2010 agreement reinstated at some point. The record does not reflect when Applicant actually began to make payments, but a May 2012 IRS letter confirmed receipt of the March 2012 payment, which reduced his outstanding balance to just under \$4,900. Applicant documented all the required monthly payments from April to August 2012.

Applicant filed his 2007 and 2009 state income tax returns in December 2010. He filed his 2010 state income tax return in December 2011, and he filed his 2007 state income tax return in March 2012. His total tax liability, as reported, was about \$3,500 before penalties, interest, and other fees.

Applicant's state tax records are less clear than his IRS records. A state "Payment Arrangement Coupon" dated 5 April 2012 reflects an agreement to make the first of 13 \$160-monthly payments on 16 April 2012, against a stated balance of \$10,751.85. The coupon does not show how that number was reached, or for what tax years it applies. A state "Application of Refund or Lottery Payment" dated 8 May 2012 reflects the state's seizure of Applicant's 2011 refund of \$110, reducing an outstanding 2008 balance to \$9,325.84. A state "Notice of Assessment" dated 24 May 2012 showed tax, penalty, interest, and other fees totaling \$2,218.90 for 2008. A 6 June 2012 "Payment Arrangement Coupon" reflects a reminder to make the third of 13 payments on 16 June 2012, against a balance of \$1,052.26. Absent any state records showing how these numbers have been calculated, I conclude that this balance must be a typographical error. The stated 13 payments total just over \$2,000, an amount inadequate to cover Applicant's own estimate of his state tax liability. Nevertheless, Applicant's records show that he has made the required \$160 payments from April to August 2012.

Applicant also began to have trouble meeting his mortgage payment sometime in 2010. By July 2010, he was one-month behind on his mortgage. He continued to make payments, but remained one-month behind through October 2010. He was working with his lender to modify his mortgage, but received conflicting instructions about what he had to do to qualify for a modification. From December 2010 to September 2011, he paid the lender between \$600 and \$760 per month as instructed. However, he was then told that he could not qualify for a modification unless his mortgage was current. In October 2011, Applicant began the first of 24 \$1,453.96-monthly payments required to rehabilitate his mortgage. Applicant documented 11 required payments through August 2012 with a customer account activity statement and money-order receipts. However, there is some confusion in the documents submitted in Applicant's response to DOHA interrogatories (GE 2). A 16 April 2012 letter from the lender states a past-due balance as of the date of the letter. But the letter purports to schedule the first payment for October 2012, later states that the first payment is due in May 2012, but then sets out a repayment chart showing 24 payments beginning October 2011 and ending September 2013. Finally, Applicant's signature page accepting some agreement is dated 8 September 2011, consistent with when Applicant actually began making payments, and with the repayment chart, but not with any of the body of the letter.

Applicant submitted no work or character evidence. He has a budget that accounts for his monthly payments as listed above, but with little cushion. Nevertheless, he hopes to sell his dump truck in the near future, which would improve his cash situation considerably.

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.⁴

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant’s three outstanding debts have repayment plans, and Applicant has been making the required monthly payments since before the SOR was issued.⁵

The mitigating factors for financial considerations have mixed applicability. His financial difficulties are both recent and multiple, and occurred under circumstances that could recur.⁶ The debts did not occur largely under circumstances beyond his control. He certainly controlled whether he filed his income tax returns on time or contacted tax authorities to arrange payment schedules. And, at least initially, he did not act responsibly in addressing his debts.⁷ He was only spurred to action when the IRS filed a tax lien on him in October 2010. That said, since October 2010, he has acted responsibly to address his debts. While he has received no credit or financial counseling, he has demonstrated that his financial problems are under control, and that he is working a plan to bring them under control.⁸ While his records are not a model of clarity, and there are some inconsistencies in his documents, he has made a good-faith effort to satisfy his debts. He has been making catch-up payments on his mortgage since October 2011, and has been paying on his state and Federal tax debts since at least April 2012—all dates before the SOR was issued.⁹ Accordingly, I conclude Guideline F for 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 and frank answers during the clearance process. Although Applicant failed to report any financial problems, he was aware of his delinquent mortgage and his state and Federal

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;

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

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(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;

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

tax problems. This conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹⁰

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, and then apparently only when confronted by the investigator.¹¹ Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel, particularly with his background as a Government security specialist. 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. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. Applicant provided no information to support a favorable assessment under a "whole-person" analysis. Accordingly, I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-g:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant

¹⁰¶ 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. . . .;

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

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