



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXX, Xxxxxx Xxxxxx) ISCR Case No. 11-10077
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 24 April 2014, the Department of Defense (DoD) 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 before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 5 November 2014, and I convened a hearing 6 January 2015, by video-teleconference. DOHA received the transcript 15 January 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibits (AE) A-D. AE C-D were timely received post hearing. The record in this case closed 28 January 2015, the day Department Counsel indicated no objection to Applicant's post-hearing submissions.

²The DoD 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 financial allegations 1.a, 1.h, 1.k-1.l, 1.q-1.t, and 1.aa. He denied the remaining financial allegations as well as the personal conduct allegations. He is a 56-year-old satellite maintenance technician employed by a defense contractor since October 2013. He has not previously held a clearance.

Applicant was employed full time from December 2002 until December 2007, when the company that employed him went out of business (Tr. 31; GE 1). From January 2008 until July 2008, he was first unemployed, then employed at two full-time, but short-term jobs. He was unemployed from July 2008 to May 2009. From May 2009 to April 2011, he held three, sometimes overlapping, part-time positions. In April 2011, he obtained the position that required his April 2011 clearance application. He held that position, pending his clearance, until December 2012, when he lost the position because his clearance status had been changed from “interim” to “determination pending” (AE B). He remained unemployed until October 2013, when his current employer assumed sponsorship of his clearance.

In his April 2011 clearance application (GE 1), Applicant answered “no” to a series of questions designed to elicit any unfavorable financial circumstances. Applicant falsely claimed that he had no financial judgments against him (SOR 2.a),³ and had no collection accounts,⁴ no accounts that had been 180-days past due,⁵ and no accounts currently 90-days past due (SOR 2.b).⁶ Applicant testified that he was unaware of his financial problems at the time he completed his clearance application, and did not become aware of these issues until he obtained a copy of his credit report. However, court records (GE 7) reflect that Applicant was served on the judgment, and he acknowledged that, at least with his delinquent education loans, he knew that he had delinquent education loans (Tr. 60-62). Moreover, during a May 2011 subject interview with a Government investigator, Applicant volunteered that he owed back rent since about October 2009 (GE 2; SOR 1.k, 1.q).

The SOR alleges, and Government exhibits confirm, 27 delinquent debts totaling over \$41,000. Applicant admits 10 debts totaling nearly \$12,000. He denies 17 debts totaling over \$29,000. Over \$28,000 of that figure is for delinquent education loans. However, record evidence shows that the education loans at SOR 1.i-1.j, 1.m—1.p, and 1.u-1.v are all duplicates, in some form, of the education loans at SOR 1.d-1.g. Thus, the amount of delinquent education loans, as alleged, is closer to \$10,500.

³Section 26: e. Have you had a judgment entered against you?

⁴Section 26: g. Have you had bills or debts turned over to a collection agency?

⁵Section 26: m. Have you been over 180 days delinquent on any debt(s)?

⁶Section 26: n. Are you currently over 90 days delinquent on any debt(s)?

In January 2014, Applicant established repayment plans with the two creditors holding the four education loans. He began making \$105 monthly payments by electronic debit on two loans totaling about \$8,600. He documented making the first three payments, and provided a notice of withdrawal for the fourth payment. On the other two loans, Applicant agreed to pay \$60 monthly on loans totaling about \$4,150. He made a large lump-sum payment in January 2014, and documented the February-April payments (Answer). Post-hearing, Applicant provided documentation he claimed was from his online banking statement purporting to confirm the January-April 2014 payments already documented in his Answer, and \$60 payments for June, July, August, October, November, and December 2014 [AE C(3)]. However, he did not provide copies of the bank statements that would have actually proven the latter payments. He provided no evidence to show that he had continued making the \$105 monthly payments to the other education loan creditor.

Record evidence also suggests that SOR debt 1.s is a duplicate of SOR debt 1.h., and that SOR debt 1.q is a duplicate of SOR debt 1.k.⁷ In June 2014, the creditor for SOR 1.k agreed to accept \$1,670 as full settlement.⁸ Applicant provided a 27 January 2015 receipt [AE D(1)] verifying the account was settled in full

Applicant's financial problems are attributable to his lengthy periods of unemployment and underemployment since December 2007. Communication with his creditors has been complicated by the fact that he has been employed overseas since April 2011.

As of the date of the hearing, Applicant had made no contact with the creditor at SOR 1.a (Tr. 34-35), despite his previously-stated intent to do so in November 2013 (GE 3). Applicant had identified the successor-in-interest in February 2012, and made preliminary contact by email (Answer), but had not followed up. Applicant's post-hearing submission [AE C(3)] purports to show a payment arrangement made on 13 January 2015, and a first monthly payment of \$253.99 made on 14 January 2015. However, like the education loan payments claimed above, Applicant did not provide the corroborating bank statement that would have proved the payment.

Applicant claims, without corroboration, to have made several efforts to contact the creditor at SOR debt 1.h. He also claims, again without corroboration, that the creditor at SOR debt 1.l is unable to locate the account (Tr. 36-37). He has not made any contact with the creditor at SOR debt 1.t, having only recently located the successor-in-interest (Tr 38).

⁷The judgment at SOR debt 1.q appears to be for a single month's rent in September 2009. The balance alleged in SOR debt 1.k appears to be the final accounting for Applicant's apartment, including unpaid rent from the time of Applicant's early vacation of the apartment until the landlord was able to re-rent the apartment (Answer).

⁸Answer, AE C(3)

Applicant had not contacted the creditor at SOR 1.r. He acknowledges that he owes the creditor money, but disputes the amount owed (Tr.43-44). He owes the creditor at SOR debt 1.x for food stamps and general assistance he received while he was unemployed, but has yet to contact the creditor (Tr. 38-39).

Applicant initially claimed that SOR debts 1.w, 1.y, and 1.z were unknown to him, but he eventually learned that the creditors were the successors-in-interest on several video or music clubs. However, he had yet to contact any of the creditors to make payment arrangements (Tr. 44-46).

Applicant claimed that he paid SOR debt 1.aa in December 2013, but was unable to produce a receipt for the payment (Tr. 38-39). However, his post-hearing submission [AE C(3)] now asserts that he contacted the creditor on 13 January 2015, reached a payment agreement on a \$1,000 debt (not \$250 as alleged in the SOR), and scheduled a first payment for 23 January 2015. Further, Applicant claims that the creditor does not send email confirmations or receipts, providing only oral confirmation until the entire balance due is received, meaning that he is unable to corroborate these claims.

Applicant's two character references [AE C(5)] consider him honest and trustworthy, and recommend him for his clearance, notwithstanding his financial problems. His project lead praised his work ethic (Tr.70-73) and noted that he had helped Applicant obtain a copy of his credit report and advised him how to contact his creditors to resolve his debts. He has not documented any financial or credit counseling beyond the informal assistance provided by his project lead. He did not provide documentary evidence to show that he follows a budget.

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.⁹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant’s debts go back several years, and while he has made substantial progress on many of his debts, he still has nine unresolved debts totaling nearly \$9,500 that he has yet to take meaningful action on.¹⁰ Moreover, although I have found for Applicant on his education loans, he did not document that he had remained current on his payments through December 2014.

The mitigating factors for financial considerations offer Applicant only partial relief. His financial difficulties are both recent and multiple, and occurred under circumstances that could recur.¹¹ His periods of unemployment and underemployment certainly constitute circumstances beyond his control, and he has acted somewhat responsibly in addressing his debts since becoming re-employed in October 2013, to the extent that he has acted.¹² Notwithstanding, he has nine debts that he has not even begun to address, and does not appear to have a concrete plan for addressing them. He has received no credit or financial counseling; nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under control.¹³ His repayment efforts might be considered a good-faith effort to satisfy his debts as far as the debts he addressed, but obviously not regarding the nine debts that remain unaddressed.¹⁴ 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 and frank answers during the clearance process. Although an Applicant might be excused

⁹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

¹²¶ 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;

¹³¶ 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;

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

for not having a encyclopedic memory of all debts at the time of the clearance application (in the absence of a credit report), an Applicant must at least disclose in general the fact of financial problems or a partial description of outstanding debts. In this case, Applicant knew at the time of his clearance that he had outstanding rent and delinquent education loans, yet he failed to disclose that fact. I find his explanations for failing to so do unconvincing. His conduct constitutes a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹⁵

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 only after confrontation by the investigator.¹⁶ 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. 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
Subparagraph a:	Against Applicant
Subparagraphs b-g:	For Applicant
Subparagraph h:	Against Applicant
Subparagraphs i-j; m-p; u-v:	For Applicant (duplicate ed loans)
Subparagraph k:	For Applicant
Subparagraph l:	Against Applicant
Subparagraph q:	For Applicant (duplicate)
Subparagraph r:	Against Applicant
Subparagraph s:	For Applicant (duplicate)
Subparagraph t:	Against Applicant
Subparagraphs w-aa:	Against Applicant

¹⁵¶ 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. . . .;

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

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