



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



In the matter of:)
)
) ISCR Case No. 11-13949
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: Richard L. Morris, Esquire

06/26/2013

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s clearance is denied.

On 4 March 2013, the Department of Defense (DoD) 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 before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 11 April 2013, and I convened a hearing 22 May 2013. DOHA received the transcript (Tr.) 3 June 2013.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5 and Applicant exhibits (AE) A-N. AE N was timely received post-hearing.

²DoD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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. He is a 36-year-old job training specialist employed by a defense contractor since April 2010. He has not previously held an industrial security clearance, but had a clearance while he was in the U.S. military from February 1997 to April 2004. Except for a five-month period from February 2010 to July 2010, he has been employed full time for the last 12½ years.

The SOR alleges, Government exhibits (GE 3-5) confirm, and Applicant admits eight delinquent debts totaling over \$72,000. The debts consist of three delinquent medical accounts, three charged-off credit cards, a past-due mortgage, and \$36,000 delinquent taxes to the Internal Revenue Service (IRS). Applicant reported most of these debts on his August 2011 clearance application (GE 1) and discussed them at length with a Government investigator later in August 2011 (GE 2).

Applicant paid SOR debts 1.a, 1.b, and 1.c in March 2013 (AE A, B). He settled SOR debt 1.e at a 60% discount in March 2013 (AE D). He settled SOR debt 1.f for less than full value in March 2013 (AE F). He paid half of the past-due mortgage balance in SOR 1.g in March 2013. Applicant has listed the house for sale (AE H). He has an approved contract for short sale of the house, to close by July 2013 (AE N). Applicant has made no payments on SOR debt 1.d. Although the creditor offered Applicant substantial discounts on the balance due in January 2013 (AE C), Applicant was unable to take advantage of any of the three programs offered. He now claims, without corroboration, to have reached a repayment agreement with the creditor (AE N). Applicant was able to make the above payments because he took an early withdrawal from his retirement account in March 2013.³

The \$36,000 IRS debt is a joint liability because Applicant and his wife are joint filers. However, the tax liability, which is for tax years 2008 and 2009, is related solely to the business Applicant's wife ran from 2007 to 2010. She had not organized her company in a way that permitted filing a business return, and she did not set aside the full amount that her accountant recommended that she set aside to satisfy her payroll tax obligations. Applicant's wife established a repayment plan with the IRS in October 2009, and made some, but not all, the required payments between December 2009 and May 2010. In November 2010, she was taken off the installment plan for failure to make payments as required. Applicant's wife established a second repayment plan in August 2011. Applicant's IRS records (GE 2) show monthly payments from September 2011 through January 2012 and from March 2012 through December 2012, which is the end date of the IRS report. AE G reports receipt of the March 2013 payment, but also notes that the monthly payment increased from \$400 per month to \$800 per month beginning in April 2013. Applicant's wife paid \$400 for April 2013, but has made no payment for May 2013 as required.

³Applicant had his employer withhold federal income taxes from the amount distributed to him.

Applicant attributes his financial problems to his 2010 unemployment, a significant decline in his wife's income about the same time,⁴ and the collapse in the housing market. However, the record reflects that Applicant entered his unemployment already carrying significant balances on the two credit card accounts. His unemployment and his wife's decrease in income only compounded the problem. Further, with Applicant's new job in July 2010 and his wife's moving to full-time employment in September 2010, their income was restored to the level it was before he lost his job in February 2010. Finally, the roots of Applicant's financial problems lie in two financial decisions Applicant and his wife made, in 1995 and 2006 respectively.

Shortly after Applicant and his wife married in November 1994, they decided that rather than have joint accounts and a joint budget, they would divide the household expenses between them, and be separately responsible for their share (Tr. 98). In addition, in 2006, they refinanced their house with an adjustable-rate mortgage to make some necessary renovations and repairs to their house. Their mortgage payment increased dramatically in 2011, and they were unable to keep up with the payments.

Applicant has favorable work references (AE J, K, M). His supervisor considers him honest and trustworthy, and recommend him for his clearance. He is generally aware that the SOR involves financial issues, but was not aware of the amount of debt or the fact that Applicant did not begin to address his financial issues until the SOR was issued (Tr. 26-36). Similarly, his long-time friend knew that Applicant had some financial problems, but did not know that Applicant acted to address them only after receiving the SOR (Tr. 48). Applicant has attended some financial seminars at his church, but has not submitted a comprehensive 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 is Guideline F (Financial Considerations).

⁴When Applicant lost his job in February 2010, his wife was self-employed. She had contracts with two clients, one of which she lost in March 2010. The company she had the second contract with hired her full time in September 2010. However, she has given conflicting explanations for how she came to work for them full time. She initially testified (Tr. 54-55) that her contract with the company required her to go to work full time for the company if the company secured the business that she had been contracted to work on. The company won the business and she went to work for them full time under the terms of her contract with them. But she later testified (Tr. 62) that she asked the company to hire her full time when she lost the other contract.

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 was slow to act on his delinquent debts, and the bulk of his indebtedness remains unresolved.⁶

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁷ The factors that contributed to his financial problems can certainly recur. Applicant did not document his claimed repayment agreement with the creditor at SOR debt 1.e, and the repayment plan on his joint tax liability is now at least one-and-a-half payments delinquent. While his February-September 2010 unemployment and his wife's temporary decrease in income were the immediate precipitants of their financial problems they were already carrying significant credit card debt and looking at increased mortgage payments when these events occurred.

Finally, Applicant has known of the Government's concerns about his finances since at least August 2011, yet took no action to address them until after he received the SOR. And that action was only possible because he took an early withdrawal from his retirement account. Consequently, he has not acted responsibly in addressing his debts.⁸ The Government is not the collection agent of last resort, but has a legal and moral interest in whether applicants faithfully discharge their financial obligations. Applicant has attended some financial seminars at church, but otherwise has had no

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 . . .

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;

