



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 XXXXXXX, Yxxxx XxXxxxx) ISCR Case No. 12-02661
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

03/19/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 25 February 2014, 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 28 August 2014, and I convened a hearing 25 September 2014. DOHA received the transcript (Tr.) 3 October 2014.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, hearing exhibit (HE) I, and Applicant exhibits (AE) A-E.

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 SOR allegations 1.a-1.b., 1.d, and 1.g-1.h; he denied SOR allegations 1.c and 1.e-1.f. He denied SOR debt 1.c as a duplicate of debt 1.h. However, the two accounts have different account numbers, and I conclude that they are separate accounts. He denied SOR 1.e because he has no knowledge of the account. He denied SOR 1.f because the creditor reportedly could not find any record of the account.

Applicant is a 52-year-old systems administrator employed by a defense contractor since July 2011. He has been employed on the same contract by two different contractors since July 2005. Applicant was employed by a different Government contractor in another state from February 2003 to July 2005. Applicant served in the U.S. military from December 1979 to February 2003, when he retired in paygrade E-6. He seeks to retain the security he has held as necessary since entering the military.

The SOR alleges, and Government exhibits (GE 2-3, 5) establish, eight delinquent debts totaling over \$47,000. However, after careful examination of the five credit reports in the record, I conclude that the correct amount of the debt at SOR 1.c is \$3,355, not \$28,749.³ Consequently, the correct amount at issue is just over \$22,000. All these debts are the sole obligation of Applicant.

Applicant admits five delinquent debts totaling \$16,000. He denied three debts totaling \$31,300, corrected to \$5,900. Record evidence reflects that Applicant accepted a July 2014 offer from the creditor at SOR 1.a to settle the account for a fifty percent discount, by paying \$64 monthly beginning July 2014 (AE E). Applicant documented the July and August 2014 payments, and testified that he had made the September 2014 payment (Tr. 36). Applicant paid SOR debt 1.d in May 2014 (AE C). In April 2014, the creditor at SOR 1.h offered to settle the debt for a lump-sum payment of twenty-five percent of the amount due paid within the next month, or a payment plan of unspecified amount and duration (AE B). Applicant accepted a 12-month plan, and has made the

³The original creditor sold a debt of \$2,042 to another lender in August 2009 (GE 2). That lender sold the account to a third lender in May 2011. The third lender reported acquiring a \$2,043 debt, that had grown to \$2,766 in November 2011. The account numbers match exactly. The Government investigator asked Applicant about this debt—at the \$2,766 figure—during his November 2011 subject interview (GE 4). The \$28,749 figure first appears in a June 2013 credit report by Equifax (GE 3) as the total owed, with a past-due balance of \$2,879. The \$28,749 figure occurs nowhere else in any of the credit reports. However, in the May 2013 credit report that Applicant submitted with his answer to DOHA interrogatories in June 2013 (GE 4), TransUnion, Experian, and Equifax each report a past-due balance of \$2,837. Both TransUnion and Equifax report that the original amount of the debt was \$2,043. An August 2014 Equifax credit report (GE 5) reports a total balance and past-due balance of \$3,355. Account notations reflect that Applicant was disputing the account. Applicant's August 2014 Experian credit report (AE D) reflects both the original creditor's sale of the account and the current creditor's reported past-due balance of \$3,355, updated from the creditor's processing of his dispute in May 2013. Consequently, I conclude that the \$28,749 figure is most likely a key-stroke error in reporting the total balance in June 2013, and that the correct balance is \$3,355.

required monthly payments from May 2014 through September 2014. The payments run through April 2015.

Applicant married in August 1982, and had twin sons with his wife in August 1986. They separated in February 2003, so Applicant could be with his new partner. They remained separated without further action until sometime in 2011, when his wife filed for divorce (Tr. 34-35).⁴ Their divorce was final in June 2013.

After Applicant and his wife separated in February 2003, he and his partner moved in together. Applicant and his partner separated sometime in 2009. Applicant attributes his financial problems largely to this separation (Tr. 32-34), although he also states his financial problems were exacerbated when his wife filed for divorce in 2011. Applicant acquired a new partner in December 2010 (GE 1).⁵ They married in November 2013 (Tr. 47).

Applicant provided no work or character references. His June 2013 personal financial statement (GE 4) reflected about \$3,330 positive monthly cash flow. He estimated his current monthly cash flow at \$2,500-3,000 (Tr 46). His personal financial statement (PFS) shows no payments to any of the creditors alleged in the SOR. Applicant has been continuously employed since his 2003 retirement. He has not received any credit or financial counseling.

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.

⁴However, during his November 2011 subject interview, Applicant told the Government investigator that he filed for divorce.

⁵Applicant's clearance application listed a "friend" and "roommate" to confirm his current address in November 2011. He later listed a "cohabitant" who had a different name.

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.⁶

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has \$22,000 in delinquent debt that he voluntarily incurred and has yet to resolve.⁷ Moreover, despite the fact that a Government investigator discussed these debts with Applicant in November 2011, and DOHA queried Applicant about the status of these debts in June 2013, he took no documented action to address any of the debts until after he received the SOR in February 2014. He fully resolved only one \$80 debt and made repayment plans on only two of the remaining seven debts.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent, not infrequent, and ongoing.⁸ While the circumstances that caused and exacerbated his indebtedness were beyond his control, he has not demonstrated that his changed living circumstances prevented him from addressing his delinquent debts any sooner than he did. Six of the eight debts alleged are substantially below \$1,000 each. He cannot be considered to have acted responsibly in addressing his debts under the circumstances, because the debts have lingered for many years without resolution or serious efforts toward resolution.⁹ Further, Applicant appears not to have undertaken any effort to address his debts until he received the SOR in February 2014. Moreover, the minimal efforts he has undertaken do not constitute a good-faith effort to resolve his debts.¹⁰

Although Applicant appears to have the means to address his delinquent debts—and has had since at least June 2013—he has established no meaningful timetable for their resolution. He has not received credit or financial counseling. His PFS showed no payments to any of his creditors. He certainly has not demonstrated that

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

⁹¶ 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;

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

