



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-03950
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

09/02/2014

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 23 October 2013, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) 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 26 February 2014 and I convened a hearing 2 April 2014. DOHA received the transcript 10 April 2014.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, Hearing exhibit (HE I), and Applicant exhibits (AE) A-CC. AE J-CC were timely received post hearing. The record in this case closed 8 July 2014, the day Department Counsel indicated no objection to Applicant’s post-hearing exhibits.

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 54-year-old network engineer/classified information custodian for a defense contractor since November 2011. He previously retired from the U.S. military after 23+ years honorable service in paygrade E-7 (AE J). He is a highly-decorated veteran of combat operations.

The SOR alleges, Government exhibits (GE 2-4) substantiate, and Applicant admits, eight delinquent accounts totaling over \$37,000. Applicant also admits losing a home to foreclosure in 2011.

Before Applicant retired from the military in September 2010, he had entered a debt settlement plan in 2008 or 2009 (GE 2) to address several delinquent debts. He was current with his plan payments until he retired. He had not obtained post-retirement employment, and had only his retirement income and his wife's part-time-job income to handle his household expenses. When he missed some plan payments, the company dropped him from the plan.

Applicant remained unemployed until November 2010 when he was hired as a security guard, a job whose salary was inadequate to enable him to address his delinquent debts. He obtained a better-paying job in February 2011, but was still unable to address his delinquent debts. Not until he obtained his current employment in November 2011 did he have enough salary to begin addressing his debts. Applicant entered into repayment plans with two creditors not alleged in the SOR, resolving those debts in April and August 2013, respectively (GE 5).

In August 2013, Applicant entered into a debt settlement plan with the same company he used when he was in the military (GE 5; AE Y). Applicant originally enrolled the six delinquent debts at SOR 1.a-1.f, totaling about \$32,000. Applicant later enrolled SOR debts 1.g and 1.h in November 2013. He added two additional debts not alleged in the SOR in April 2014 (AE U). Applicant began the \$537 monthly payments to the debt settlement company in September 2013 and was to continue to make that monthly payment until about April 2017.³ Applicant has made plan payments as required through March 2014 (AE W).

Applicant settled SOR debt 1.a (\$1,735) in November 2013 (AE E). Although Applicant originally enrolled SOR debt 1.b (\$2,302) in the debt settlement plan (Answer, Enclosures 1, 3; AE Y), he reached a direct settlement with the creditor in February 2014 to pay \$1,267 in four equal payments from February through May 2014 (AE F).

³The mechanics of the plan were that as Applicant's plan payments accrued and reached certain defined target amounts for each debt, the plan would make a bona fide settlement offer to the creditor. If the creditor accepted the offer, the plan would make the agreed payments. Once the agreed payments were made, the plan earned a "success fee" of 20% of the original debt amount. For example, the plan settled SOR debt 1.a (\$1,735) for \$785 paid over three installments in September, October, and November 2013 (Answer, Enclosures 1-3; AE E). Once the payments were made, the plan earned a "success fee" of \$347 (AE W).

Applicant made the February and March 2014 payments as agreed. Similarly, Applicant enrolled SOR debt 1.c (\$14,925) and received a direct settlement offer from the creditor in August 2013 for \$3,731.46 (AE G). However, Applicant was unable to meet the creditor's August 2013 deadline for a lump-sum payment, so this debt remains pending with the debt settlement plan. Applicant had projected not being able to make a settlement offer on this account until October 2016 (AE Y). However, Applicant now estimates making a settlement offer in April 2016 (AE U).

Applicant enrolled SOR debt 1.d (\$8,115) in the debt settlement plan (Answer, Enclosure 3; AE Y), but reached a direct settlement with the creditor in November 2013 to make a \$1,200 lump-sum payment in November 2013, followed by 12 monthly payments of \$204.35 through November 2014 (Answer, Enclosures 4, 5). Applicant documented the lump-sum payment and monthly payments through March 2014 (AE H, O). Applicant enrolled SOR debt 1.e (\$814) in the debt settlement plan (Answer, Enclosure 2, AE Y), but the creditor did not accept the plan's offer (Answer, Enclosure 2; AE E). Consequently, this debt remains pending with the debt settlement plan, which estimates making another settlement offer in August 2014 (AE U).

Applicant enrolled SOR debt 1.f (\$4,625) in the debt settlement plan (Answer, Enclosure 2; AE Y), but the creditor did not accept the plan settlement offer in November 2013 (Answer, Enclosure 1; AE E). However, the creditor later settled the debt for \$3,000, payable in seven monthly payments beginning December 2013 (AE E). By April 2014, Applicant had made four required payments totaling \$1,412 (AE X) and had received confirmation of those payments from the creditor, as well as the remaining balance of \$1,588 (AE Z).

Applicant enrolled SOR debt 1.g (\$593) in the debt settlement plan (Answer, Enclosure 1), but the plan does not anticipate making a settlement offer until July 2014 (AE U). One of the debts added in April 2014 is projected for a settlement offer in July 2014; the other is projected for an offer in October 2014. SOR debt 1.h (\$3,953) is currently inactive in the plan (AE V; Answer, Enclosure 1).

Applicant unsuccessfully attempted to modify his mortgage with the lender in November 2010, April 2011, and June 2011. The only plan the lender offered Applicant was to increase his mortgage payment to \$2,800 per month (from \$1,600). Applicant made the higher payments from July 2011 through October 2011, but when his November 2011 payment was late, the lender cancelled his repayment plan and began foreclosure proceedings. The lender confirmed that Applicant has no remaining liability for the property (Answer, Enclosure 6; AE i).

Applicant's financial problems were largely related to periods of unemployment and underemployment he experienced from September 2010 to November 2011, after his retirement from the military. However, he began addressing his debts as soon as he was re-employed at a significant salary. Applicant earns about \$68,000 per year in his job (AE M) and nets about \$985 per month in retirement pay (AE L). Applicant has an

excellent employment record at work (AE D, BB). Nevertheless, he did not provide any work or character references.

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 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, 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, 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 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 entered a debt settlement plan before his September 2010 retirement, and was making progress on the debts he had at the time. However, his unemployment and underemployment from September through November 2011 derailed his efforts and added to his financial difficulties.⁵

Under his current plan, Applicant has resolved SOR debt 1.a. He reached a direct settlement on SOR debt 1.b, and documented the first two of four payments. He should have completed the payments in May 2014 to resolve this debt. SOR debt 1.c is projected for a settlement offer in April 2016. Applicant reached a direct settlement on SOR debt 1.d, and documented a \$1,200 initial lump-sum payment as well as the first

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;

four scheduled monthly payments. By now, he should have made the next five monthly payments, leaving only three monthly payments before this account is completely resolved.

Applicant's first settlement offer on SOR debt 1.e was not accepted by the creditor, but a second settlement offer is projected for August 2014. Similarly, the first settlement offer on SOR debt 1.f was not accepted by the creditor. However, the creditor later accepted a settlement offer and Applicant documented the first four of seven required payments, paying about half of the agreed amount. Applicant should have completed plan payments in June 2014, resolving this account. SOR debt 1.g is projected for a settlement offer in July 2014. SOR debt 1.h is still pending resolution. The foreclosure of Applicant's home in 2001 (SOR 1.i) resulted in no further liability for Applicant.

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, Applicant's employment is now stable; so the circumstances that caused them are less likely to recur.⁶ Further, his financial problems were largely due to circumstances beyond his control, and he began addressing his delinquent debts once he obtained stable employment in November 2011. He has continued to address his other delinquent debts since then.⁷ While there is no evidence that Applicant has had any financial counseling, he has clearly acted to get his finances under control.⁸ The only debt not completely projected for resolution totals under \$4,000 and Applicant has demonstrated the willingness and ability to address his delinquent debts through the debt settlement plan. Having addressed his other financial obligations, I am confident this final obligation will also be addressed. Overall, substantial progress has been made addressing his delinquent debt.⁹

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.¹⁰ Applicant's efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

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.

¹⁰ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-i: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge