



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 14-00010
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro se*

09/27/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 14 April 2014, 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 17 August 2015 and I convened a hearing 8 October 2015. DOHA received the transcript 16 October 2015.

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

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 financial allegations 1.a-1.c; he denied the remaining allegations. He is a 42-year-old vice president for information technology employed by a defense contractor since July 2010. He is a 1995 graduate of a United States (U.S.) military academy. He has been continuously employed since leaving active duty in February 2004. He seeks to retain the clearance he has held, as necessary, since entering the academy, including the industrial clearance issued to him in March 2004 (GE 1).

The SOR alleges eight delinquent debts totaling over \$62,000. Government exhibits substantiate all the debts except SOR 1.f, which Applicant denied. Accordingly, I find SOR 1.f for Applicant. Applicant admitted SOR debts 1.a-1.c totaling nearly \$56,000. The Government's evidence established that SOR debt 1.d is a duplicate of SOR debt 1.a, that SOR debt 1.d was paid in June 2013 (before the SOR was issued)(GE 5), and that SOR debt 1.h is his wife's account for which he is only an authorized user, and thus not legally obligated for the debt. Consequently, I find SOR debts 1.d, 1.e, and 1.h. for Applicant. At issue are four debts still totaling about \$56,000.

The bulk of the debt is for a charged-off \$31,000 line of credit that Applicant used for his business when he was self-employed (SOR 1.a), and a 90-days past-due first mortgage for \$25,000 on a balance of \$1,907,725 (SOR 1.c). The remaining debts are a \$40 medical bill (SOR 1.b) and a \$300 traffic ticket (SOR 1.g). Applicant paid the medical bill, but the creditor will not give Applicant proof of payment (Tr. 38). He has not done anything about the traffic ticket (Tr. 38).

Applicant has been making regular payments on the line of credit for several years. He had apparently hoped to avoid having the creditor report the account as charged-off, but the creditor was unwilling to agree to that.³ Applicant's credit reports show that the balance owed has gone from the \$30,000 alleged in SOR 1.a in January 2012 (GE 4), to \$24,549 in July 2014 (GE 2), to just over \$20,000 in October 2015 (GE 5). In a similar fashion, Applicant's mortgage was 30-days past due in the amount of \$16,264 on a balance of \$1,937,782 in January 2012 (GE 4). The past-due amount had grown to the \$25,000 alleged in SOR 1.c by November 2013 (GE 3), but the overall balance had been reduced to \$1,907,725. The account was reported as merely delinquent, having been 90-days past due. By July 2014, the balance had been further reduced to \$1,880,000 (GE 2). Finally, in October 2015, the balance was \$1,841,843, and reported as "pays as agreed" (GE 5).⁴

Applicant's financial problems are related to an unsuccessful real estate venture that he and his wife undertook in January 2005. Before 2005, Applicant and his wife had some success in other real estate ventures. On the strength of those ventures,

³However, the credit reports reflect that the account was closed at Applicant's request, not the credit grantor.

⁴GE 5 recorded the last payment dates on SOR 1.a and SOR 1.c as August 2015.

Applicant and his wife were able to buy a horse ranch, secured by a nearly \$2,000,000 note (AE E). They lived on the ranch, and put significant money into improvements. Applicant ran his consulting business from the ranch;⁵ his wife ran the ranch, trying to turn it into a successful operation. They planned to sell the ranch once it was a going concern. However, that plan was overtaken by the economic downturn of 2007-2008 (Tr. 27-31).

Applicant and his wife put the house on the market in July 2007, but were unable to sell it, and took it off the market in September 2008 (AE E). They then leased the ranch for a year in September 2008, and moved to a less-expensive rental property (GE 1). At the end of the year, they moved back to the ranch. In September 2009, they listed the ranch for lease with an option to buy. They ultimately leased the ranch in March 2011,⁶ and moved to another state, where they could live rent-free in a family owned home (GE 1; Tr. 27-31). However, the lease was fraught with problems. The tenants defaulted on the lease, and Applicant tried to reach a settlement with them in July 2013 (AE B). In November 2013, the tenants executed a confessed judgment balloon note (AE C), but later defaulted. Applicant reduced the default to judgment in July 2014 (AE D), but have not recovered any money from the tenants (Tr. 27-31). They eventually had the tenants evicted, and moved back to the ranch in about September 2013.

While these events transpired, Applicant and his wife fell behind on their accounts. However, it is clear that they were unwilling to walk away from their debts (Tr 28, 30). In addition to the SOR debts, Applicant's credit reports (GE 2-5) reflect numerous accounts that had been 30-90-days past due, but which were not current.

Applicant currently earns \$220,000 plus bonuses, which were \$70,000 last year (Tr. 35). He earned another \$42,000 on an outside consulting contract. He expects to earn at least \$10,000 in bonuses this year (Tr. 43). Their ranch is no longer an operating horse ranch. Applicant's wife works for a non-profit group (Tr. 32). After his monthly mortgage (\$8,500) payment (Tr. 31) and his line-of-credit payment, as well as delinquent debts that are his wife's responsibility, Applicant and his wife have approximately \$2,500 positive monthly cash flow (Tr. 36).

Applicant documented no credit or financial counseling. He did not provide any work or character references. However, he has recently been awarded his company's "Excellence in Character and Ethics Award," designed to recognize an individual's actions and behaviors that demonstrate a personal commitment to always do the right thing by acting with honesty, integrity, commitment, and loyalty (AE F).

⁵Applicant opened his consulting business in October 2006 (GE 1), but took his salaried job in July 2010—at a substantial reduction in pay—to stabilize his income.

⁶ The lease (AE A) was signed in November 2011, but apparently backdated to March 2011.

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.⁷

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. The 2007-2008 economic downturn scuttled their plan for their horse ranch, and an unreliable tenant torpedoed their backup plan for keeping their finances in order.⁸

Nevertheless, the mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, the circumstances that caused them are less likely to recur.⁹ Applicant took proactive steps when the financial situation began to change, first by taking a regular, salaried job, and second by trying to reduce his expenses by leasing his horse ranch and moving to a rent-free property. Further, his financial problems were largely due to circumstances

⁷See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

beyond his control. He could not have seen the 2007-2008 economic downturn, and plenty of people saw their real estate ventures, whether person, business, or mixed, plummet. Nor could he have foreseen that his tenant would prove to be unreliable. Moreover, he began addressing his delinquent debts even as his finances deteriorated. When he could not sell his horse ranch, he tried to lease it. As his tenant proved unreliable, he continued to make mortgage payments even as he fell behind on his mortgage and other debts. Applicant was making payments. He has continued to address his delinquent debts since then.¹⁰ While there is no evidence that Applicant has had any financial or credit counseling, he has clearly acted to get his finances under control.¹¹

Applicant has been paying on his line of credit and mortgage since before the SOR was issued, and his credit reports reflect significant progress on both accounts. His current income is more than adequate to continue those payments.¹² While he has not documented resolution of his other debts, one of which he has taken no action on, those two debts are de minimus. Overall, substantial progress has been made addressing his delinquent debt.¹³ 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.¹⁴ Applicant's efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-h: For Applicant

¹⁰¶ 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;

¹¹¶ 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;

¹²Even the \$25,000 delinquency on his mortgage, an otherwise impressive sum, represented an account that was only 90 days delinquent. That account is now current.

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

¹⁴ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

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