



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 14-06050
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

12/02/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 4 February 2015, 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 3 March 2016, and I convened a hearing 27 April 2016. DOHA received the transcript (Tr.) 5 May 2016, and the record closed.

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

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, except for SOR 1.f, 1.k, and 1.m. He is a 67-year-old project manager employed by a defense contractor since October 2009. He has been previously employed in similar positions since January 2004. He served in various positions in the federal Government from April 1973 to January 2004, when he retired. He seeks to retain the clearance he has held, as necessary, since about February 1973, including his industrial clearance, most recently renewed in November 2008 (GE 1).

The SOR alleges, and Government exhibits (GE 1-5) establish, 14 delinquent debts totaling over \$150,000. Applicant admits 11 debts totaling over \$130,000. He denies three debts totaling just over \$20,000. Two of the debts (SOR 1.f and 1.m) he acknowledges as his, but denies them because he entered into repayment plans.

In May 2013, Applicant entered into a repayment plan for SOR debt 1.f, and is paying \$150 monthly (AE F). In August 2011, he entered into a repayment plan for SOR debt 1.m, and made the last payment in November 2014 (AE G). In September 2015, Applicant entered into a repayment plan on SOR debt 1.l, to pay \$90 monthly until the \$3,232 debt was paid (AE J).³ However, Applicant did not enter into these repayment plans until the creditors sued Applicant to collect their debts. Applicant's evidence shows that SOR debt 1.j belonged to his deceased wife, and the lender forgave the debt in November 2015 (GE B).

The creditor for SOR debt 1.a forgave the debt in December 2015. The same creditor forgave SOR debt 1.d in November 2015 (AE C). The creditor for SOR debt 1.e forgave the debt in March 2014 (AE D). In each instance, the amount forgiven by the creditor is less than that alleged in the SOR and reflected in Applicant's credit reports (GE 3, 4). Applicant claims he reported the forgiven debts as income on the appropriate income tax returns.

Applicant disclosed these debts, and another seven SOR debts on which he has taken no action, on his November 2013 clearance application (GE 1). He discussed the SOR debts with a Government investigator during a May 2014 subject interview (GE 2).

Applicant's September 2008 credit report (AE A) shows no delinquent accounts. However, many of the accounts listed, including many accounts which later became delinquent, show high utilization rates on his credit cards.

Applicant and his wife bought a home in April 2009. She was diagnosed with stage-four cancer in June 2000, and died in April 2001 (Tr. 38). Her death cut their income by about 40 percent. She had \$25,000 in life insurance, and a retirement

³Applicant documented the February-April 2016 payments (AE J).

account worth \$100,000-125,000 payment (AE H, I).⁴ However, Applicant took no steps to change his spending habits after his wife died (Tr. 87). He used the proceeds from her life insurance and retirement account to keep his credit accounts current, but not to reduce the balances to any meaningful extent. He made no concerted effort to address any of his debts between 2001 and 2010, when the money ran out (Tr. 60, 88).

In May 2011, Applicant consulted a bankruptcy attorney (AE E). He learned that he could not apply for Chapter 7 bankruptcy protection because his income was too high, and he was discouraged from filing for Chapter 13 bankruptcy protection because he would have to pay at least 25 percent of his outstanding debt, something Applicant considered onerous (Tr. 35-36). The main piece of advice Applicant accepted from his attorney was to only deal with his creditors if they took him to court to collect the debt (Tr. 36-37; AE E).

Applicant attributed his delinquent debts to his wife's death in April 2001, the ongoing expenses of caring for his mentally disabled son, and helping a family friend financially, including letting him and his son live with Applicant (Tr. 89; GE 2). He has also had his own medical issues recently. However, he acknowledges having the intent, but not the money, to pay, but also that he has made little effort to reach out to his creditors (Tr. 92-98).

Applicant currently earns \$150,000 annually (Tr 45). He earns another \$97,000 annual retired pay (Tr. 47). He receives about \$13,200 annually in social security (Tr. 42). Applicant's two adult sons live with him. One son has a mental disability, and has recently been diagnosed with cancer (AE H). Applicant receives about \$13,200 annually in social security disability on behalf of his son (Tr. 40). His other son earns \$60,000-64,000 annually, but does not contribute to the household expenses (Tr, 48, 50).

Applicant has documented no credit or financial counseling, and has not presented a budget. He provided no work or character references, or any evidence of community involvement.

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).

⁴Unless otherwise cited, the loan modification time line discussed here is contained in AE H.

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.

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.⁵

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has nearly \$144,000 in delinquent debt caused by many years of not adjusting his financial commitments to match his income.⁶ Moreover, Applicant has been aware of the debts since at least November 2013, when he completed his clearance application.

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent, and not infrequent; at this point they are largely due to Applicant's inattention to his finances since his wife died in April 2001.⁷ Her death was certainly beyond his control, but he clearly did not respond responsibly at that time, choosing to continue their old spending habits until the money she left him ran out. Even when he consulted a bankruptcy attorney in May 2011, he basically accepted the advice to wait his creditors out and deal with them only when they filed suit to recover the debts.⁸ Such a plan does not constitute a good-faith effort to pay his debts.⁹

Applicant addressed three debts by having the creditor forgive the debt. But this is not a responsible resolution. He addressed three more debts by entering repayment plans when the creditor brought suit. Again, this is not a responsible resolution.

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;

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

Moreover, even if I concluded that such resolutions were reasonable, there are seven more SOR debts that Applicant has taken no action on, and for which he has demonstrated no intent to resolve unless the creditors sue him. The Government is not the collection agent of last resort. The Government expects applicants to deal with their delinquent debts because of their legal and moral obligation to do so, not because they face the risk of adverse administrative action. He has not received credit or financial counseling. Obviously, his debt is not under control.¹⁰ Further, he provided no favorable character and work references to establish a “whole-person” analysis supporting a favorable clearance action. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-l, k-n	Against Applicant
Subparagraph j:	For 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

¹⁰ ¶ 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;