



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



In the matter of:)
)
) ISCR Case No. 14-06146
)
Applicant for Security Clearance)

Appearances

For Government: Candace L'ei Garcia, 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 I grant Applicant's clearance.

On 10 June 2015, the Department of Defense (DoD) issued an 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 1 October 2015, and I convened a hearing 6 November 2015. DOHA received the transcript (Tr.) 17 November 2015.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-C.

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 allegations. He is a 38-year-old security officer employed by a defense contractor since February 2003. He has been employed as a security officer by a second contractor since July 2010. He seeks to retain the security clearance he was granted in January 2004. Both jobs require this clearance. Applicant married the mother of his 14-year-old son in September 2013. He has a 15-year-old son through a previous relationship, and twin 10-year-old daughters through another relationship. Although his wife recently began working some part time, Applicant is essentially the sole breadwinner for his family.

The SOR alleges, Government exhibits (GE 2-4) establish, and Applicant admits, three delinquent debts totaling almost \$31,000. The debts comprise a state tax lien and two delinquent child support accounts. Applicant reported both child support accounts on his March 2014 clearance application (GE 1). He was unaware of the tax lien until his subject interview with a Government investigator in May 2014 (GE 2).

The June 2013 state tax lien (GE 3) arose out of unpaid taxes for tax years 2010 and 2011.³ In December 2014, Applicant entered into a payment plan to resolve the \$7,259.53 debt by paying \$249.72 monthly for 33 months, beginning 15 January 2015 (Answer).⁴ By 6 July 2015, he had reduced the outstanding balance by \$2,968.53, to \$4,291, including interest and penalties (Answer).⁵ Applicant documented a \$250 payment on 1 October 2015, further reducing the outstanding balance to \$3,889.28 (AE A).

Applicant attributes the child support arrears to two factors. First, although he consented to have his child support obligations enforced through garnishment,⁶ there are limitations to the amount an employer may legally withhold from an employee's pay. Applicant's child support obligations exceeded the amount his employer could withhold. Second, Applicant's loss of the child dependent exemption meant he had more income upon which to calculate his child support obligations (which are calculated through a formula which takes into account the relative incomes of both parents), resulting in an increased child support obligation on both accounts.

³At the time the tax issue arose, Applicant and the mother of his twin daughters had been splitting the dependent child exemption, with each parent claiming one child. The girls' mother began claiming both children without telling Applicant. Consequently, Applicant's claimed exemption was disallowed, resulting in additional state and Federal tax liability.

⁴Applicant was unable to state or document whether he made any payments to the state before December 2014, or whether the state waived collection of any of the original \$8,925 lien.

⁵From which balance I conclude Applicant has been making more than the required monthly payment

⁶Which is the only mechanism for enforcing child support orders in many states.

On 6 November 2015, the mother of Applicant's 15-year-old son moved the court to modify Applicant's child support obligation by dropping his arrears (AE B). However, it is unknown if the court granted the motion. Applicant's pay records reflect that he was current on his child support payments for 2014 and 2015 (as of the date of the hearing)(Answer, AE C). Applicant has attempted to have the child support for his twins modified, without success.

Applicant has not had any credit or financial counseling. He provided no current budget. He provided no work or character references, and provided no 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).

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.⁷

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant has delinquent debt dating back several years that he has been addressing since before the SOR was issued.⁸

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

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

The mitigating factors for financial considerations provide considerable help to Applicant. Although his financial difficulties are recent and not infrequent, Applicant's tax issue is unlikely to recur, and should soon be resolved.⁹ Applicant's tax issue was due to a misunderstanding and may be considered a circumstance beyond his control. His child support arrears are due to the legal limits placed on his voluntary garnishments. He has been responsible in dealing with his debts. The mother of his 15-year-old child has sought to waive the arrears. He has sought to have his obligation to his twins reduced, but has also been working two jobs.¹⁰ He provided documentation showing steady reduction of his tax liability as well as showing that his employer withholdings for his child support obligations are current.¹¹

In addition, although Applicant has received no credit or financial counseling, he has undertaken everything within his current means to resolve his remaining debts.¹² Moreover, Applicant has credibly stated his intent to resolve his delinquent debt and avoid financial problems in the future. Accordingly, I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-c: 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

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

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

¹² ¶ 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;