



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 14-07025
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

08/03/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 1 June 2015, 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 September 2015 and I convened a hearing 18 November 2015. DOHA received the transcript 3 December 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits (AE) A-H.

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.d, a debt he was unable to identify. He is a 29-year-old administrative assistant employed by a defense contractor since May 2014. He has not previously held a clearance. He has been continuously employed since leaving college in April 2007, but this is the first job he has held with any significant salary or promotion prospects. His current employer has positions of greater responsibility available to him if he obtains his security clearance (AE G).

The SOR alleges, and Government exhibits substantiate, seven delinquent accounts totaling over \$17,000. Applicant denies one debt totaling \$461. Over \$13,000 of the debt is for three delinquent education loans.³ Applicant reported significant debt on his May 2014 clearance application (GE 1).⁴ He also noted that he was getting credit counseling through his company's employee assistance program. Some of the debts he was unaware of until he obtained a copy of his credit report to complete his clearance application.

The two Federally-guaranteed education loans listed at SOR 1.a (\$7,923) and 1.b (\$2,693) originated with Wells Fargo Education Financial Services as disbursements for \$5,500 and \$3,500 respectively (GE 3). The loans were later sold to ACS/Wells, where they were reported as 120-days past due. They were later sold to American Student Assistance, where they were in collection in the amounts alleged in the SOR. Applicant began making \$50 monthly payments in May 2014. In July 2015, Applicant applied for rehabilitation of the two loans through Allied Interstate on behalf of American Student Assistance (AE C).⁵ Applicant completed the rehabilitation program and in November 2015, the lender established Applicant's permanent repayment program, to begin in December 2015 (AE E).⁶ Applicant began repayment on his private education

³A figure which reflects only the delinquent amounts. The total balance on the education loan at SOR 1.f is almost \$25,000.

⁴However, Applicant reported duplicate accounts. For example, he reported having an appointment the next day with Wells Fargo Bank to discuss consolidation of some education loans. But he had already consolidated the two loans (SOR 1.a and 1.b, totaling \$10,616) and had started a repayment plan with Allied Interstate, the collection agent for American Student Assistance, a successor in interest to Wells Fargo. Applicant made an initial payment of \$150, was to make three \$150 monthly payments, then \$50 monthly until the account was out of collections—an estimated 9-12 months. Similarly, he listed two delinquent Citibank education loans totaling \$26,728 that were guaranteed by Sallie Mae. But he also listed a debt to Sallie Mae in which he acknowledged being \$2,498 past due on a loan of which \$23,636 had allegedly been charged off. This debt is reflected in the SOR as debt 1.e—\$2,654 past due on a total loan of \$24,690.

⁵AE C has copies of two cancelled checks for \$500, that Applicant has incorrectly attributed to these two accounts. The two checks are properly attributed to the Sallie Mae debt at SOR 1.f.

⁶However, as with AE C, the payment record included as the last two pages of the exhibit apply to the Sallie Mae debt at SOR 1.f. The payment record reflects the payments made by Applicant's grandmother and co-signer between October 2010 and October 2012, and Applicant's resumption of payments in June 2014—including the \$500 monthly payments for July-September 2015 documented in AE C, which Applicant

loans in June 2014 (SOR 1.f)(AE D). Beginning December 2015, the monthly payments on both sets of loans will be adjusted: Applicant will pay \$120 monthly on his Federal loans and \$157 on his private loan (Tr. 43; AE H).

Applicant has attempted to find the creditors at SOR 1.c, 1.d, and 1.g without success. He was disputing SOR debt 1.e. SOR debts 1.c, 1.e, and 1.g appear to have aged off his November 2015 credit reports (AE A, B), which does not necessarily extinguish his liability for them, but which makes them more difficult to locate. He has had no response to his effort to contact creditor SOR 1.d (AE A).

Applicant's financial problems were largely related to his lack of income from his low-paying jobs from April 2007 to May 2014. However, he also acknowledges that he made no effort to contact his creditors during that time (Tr. 32-33). Only after he obtained his more responsible job in May 2014 did he realize the importance of having his finances in order.

Applicant currently earns \$42,000 and has about \$200 positive monthly cashflow. He lives with his significant other in a home she rents; he contributes to the rent and utilities. She has a security clearance.

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.

undertook because the lender would reduce the interest rate on the loan.

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. Applicant’s underemployment and inattention to his debts between April 2007 and May 2014 created financial problems for him.⁸

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, Applicant’s employment is now better paying and he has the prospect of a promotion if he obtains his clearance; so the circumstances that caused them are less likely to recur.⁹ Further, his financial problems were partly due to circumstances beyond his control, and he began addressing his delinquent debts once he obtained better employment in May 2014. He has continued to address his delinquent debts since then.¹⁰ While there is no evidence that Applicant has had any financial counseling, beyond what he received through his company’s employee assistance program, he has clearly acted to get his finances under control.¹¹

Applicant has been paying on his education loans since May and June 2014, and has reorganized them into more manageable payments beginning December 2015. He has had more difficulty resolving his other debts, one of which he is disputing, and several others have either aged off his credit reports, or the creditors have been unresponsive or unlocatable. Overall, substantial progress has been made addressing his delinquent debt.¹² 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.¹³ Applicant’s efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

⁷See, *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;

⁹¶ 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 (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;

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

¹³ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-g: 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