



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 15-01481
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Lei Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

02/21/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 September 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 1 March 2016, when Department Counsel stated no objection to Applicant's Response to the FORM (Response). DOHA assigned the case to me 19 October 2016.

¹Consisting of the File of Relevant Material (FORM), Items 1-7, and Applicant's Response to the FORM.

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 denied the SOR financial allegations. He is a 58-year-old facility manager employed by a U.S. defense contractor since October 2004. He was employed in a similar position from October 2001 to September 2004. Applicant served on active duty in the U.S. military from October 1975 to May 1996, received an honorable discharge, and retired on disability pay. He held a clearance while in the military, and seeks to retain the industrial clearance he received most recently in February 2009 (Item 3). He has been married since January 1977.

The SOR alleges, and Government exhibits (Items 3-7) substantiate, six delinquent debts totaling over \$46,000. The bulk of the debt is for delinquent education loans. Available evidence suggests, but does not confirm, that SOR debt 1.a is the same as SOR debt 1.f.³

Regarding SOR debt 1.b, Applicant's Response provided a 24 February 2016 letter from a collection agent for a current account owner with an account number 33*****, that shows an account paid in full on 21 February 2014.⁴ The original owner is the same as the creditor in SOR 1.b, but the account number for the original

³Record documents highlight the difficulty of following education loans through their various successors-in-interest. According to Applicant's February 2014 credit report (Item 5), this account first appears as an education loan by Bank of America in August 2007 as reported to Equifax, one of the three main credit bureaus. The account was identified by a specific 10-digit account number, 57*****1, indicating the first disbursement of an education loan. The original high credit was \$10,337. As of November 2010, the loan had been assigned to the Government because it was 120-days past due. The same information was reported to Experian, the second of the three main credit bureaus, by ACS, an education loan servicing agent. The same credit report reflects that the U.S. Department of Education (USDOE) opened an account with an identical account number in January 2008, as reported to Equifax. This account was in collection as of September 2010. However, the high credit reported was \$8,544. The same credit report lists what appears to be the same account under FEDLOAN, based on the same \$8,544 high credit, but with an entirely different 10-digit account number, 78*****FD00001. This account was reported to Equifax as 120-days past due as of January 2014. Finally, in February 2014, ECMC, a collection agent for delinquent education loans reported a collection account to TransUnion—the third of the credit bureaus—on behalf of Bank of America, which was \$10,477 past due on a balance of \$13,529. However, this account has a third distinct 10-digit account number, 66*****). This is the debt alleged at SOR 1.f. Applicant's January 2015 credit report (by Equifax) shows a collection account by ECMC, 66XXXX, being \$5,707 past due on a high-credit of \$10,477. This is the debt alleged in SOR 1.a. In addition, a July 2014 garnishment notification from Applicant's company (Item 7) showing a garnishment order from ECMC, beginning in May 2014, for \$501.13 bi-weekly, on an account with a nine-digit account number, 57*****. This could be the Bank of America education loan, morphing through ACS, USDOE, and FEDLOAN, before coming to rest at ECMC, but only if the missing 10th digit is 1. If the missing digit is 2 or 3, then the garnishment order is for one of the accounts at SOR 1.d or 1.e. The garnishment order does not state the total amount to be garnished, which would provide a clue to which account it was. In any event, Applicant's Response indicates that he made bi-weekly garnishment payments totaling \$14,478 between May 2014 and August 2015 to satisfy the garnishment order in Item 7. Applicant claimed that in February 2016 (Response) he obtained a copy of a credit report and this debt was not listed. However, he did not provide a copy of that credit report.

⁴Applicant's Answer claimed that the payment was made in May 2014.

owner is 60***** (Item 5). The same account also appears in Item 6, with the identical first-eight digits of the account number.

Regarding SOR debt 1.c, Applicant's Response also contained a 25 February 2016 letter from another collection agent that an account with file number 09-XXXX had been satisfied. The letter did not state when the account had been satisfied, or in what amount. One of the listed creditors is the same judgment creditor alleged in SOR 1.c, whom Applicant claimed was paid in January 2013 (Answer). However, the judgment was filed in April 2010, with case number 10***** (Item 5).

Finally, Applicant claimed that the education loans at SOR 1.d and 1.e had been combined into a separate account and he was making \$350 monthly payments. In his Response, Applicant provided a 24 February 2016 letter from the National Payment Center for the USDOE stating that Applicant had been making monthly payments of at least \$350 since 21 April 2014.⁵

Applicant reported three delinquent accounts on his January 2014 clearance application (Item 3), but only SOR debt 1.c was included. He discussed all the unfavorable accounts on his February 2014 credit report with a Government investigator during his April 2014 subject interview (Item 4). He claimed to have paid all his education loans in full, except for SOR 1.g, which he stated he would investigate.

Applicant attributed his financial problems to his paying legal expenses related to his adult son's divorce and paying college expenses for his daughter (Item 3, 4). He fell behind on his accounts, including his first mortgage, which is now current, but upon which foreclosure proceedings had been initiated.⁶ In addition to the SOR debts, Applicant's February 2014 credit report (Item 5) contains an education loan reported to Experian by American Education Services (AES) on behalf of Suntrust Bank and assigned to the Government. Account number 17*****PA00001 was over 120-days past due with an high credit of \$10,000.⁷

⁵The letter, for account number 10*****, reflects a \$37,784.90 principal balance, with interest, fees and costs bringing the total balance to \$60,392.19. SOR allegations 1.d and 1.e are based on credit entries made to Experian for accounts number 78*****FD00002 and 78*****FD00003, respectively (Item 5). The entries reflect that the accounts were over 120-days past due in the amounts of \$3,448 and \$3,859, on high credits of \$14,240 and \$15,614, and balances of \$14,237 and \$15,614, respectively. The combined balances total \$29,851. The accounts correspond to collection accounts reported by USDOE to Equifax, with account numbers 57*****2 and 57*****3, respectively, but with high credits of \$14,812 and \$15,384, respectively, or \$30,196 total. The same two accounts appear in Item 6, with partial account numbers, and the same high credit amounts, but did not report any balances due or past-due amounts, as the accounts had been assigned to the Government.

⁶Applicant stated that he brought his mortgage account current by taking a hardship withdrawal from his retirement account (Item 4).

⁷This account, with the identical first-ten digits, also appears in Applicant's January 2015 credit report (item 6) with the same information reported by NELNET, another servicer of delinquent education loans.

Applicant provided no budget or financial statement. He has not received any credit or financial counseling. He provided no work or character references, or any evidence of community involvement.

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.⁸

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant has a history of financial difficulties, which are ongoing.⁹ Applicant's accounts became delinquent when he chose to bear the legal expenses of his adult son and the college expenses of his daughter. He did not provide information about the onset of these financial problems, or when they abated.

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; and Applicant provided no

⁸ See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

evidence to show that the immediate causes of his problems have been resolved.¹⁰ The financial problems were not due to circumstances beyond his control because he made a conscious decision to bear some of his adult son's legal expenses and his daughter's college expenses. Moreover, he cannot be said to have been fully responsible in addressing his debts because he satisfied SOR debt 1.c¹¹ only after the creditor obtained a judgment against him.¹² And SOR debt 1.f was only paid when the creditor garnished his wages.¹³ The Government is not the collection agent of last resort. Applicants are expected to pay their debts because of their legal and moral obligation to do so, not because their clearances may be at risk. Further, debts that are taken to judgment or enforced through garnishment do not demonstrate responsible action by the Applicant.

Applicant submitted no evidence to show that he received credit or financial counseling, and the evidence he submitted does not fully show that the debts are being resolved.¹⁴ It may be that some debts are resolved and some debts are being resolved in what may fairly be described as a good-faith effort to address his debts.¹⁵ But without a more precise paper trail demonstrating that the education account described in the 24 February 2016 USDOE letter encompasses the loans alleged in SOR debts 1.d and 1.e, I am unable to find that Applicant has adequately addressed the security concerns raised by his financial problem. In addition, he did not provide a copy of his most recent credit report, a document that may have corroborated some of his claims. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraph a:

For Applicant (duplicate)

Subparagraph b:

For Applicant

Subparagraphs c-f:

Against Applicant

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

¹¹ Assuming that the collection agent's 25 February 2016 letter (Response) constitutes adequate circumstantial proof that the account referred to is the same as SOR debt 1.c.

¹²¶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;

¹³ Again, assuming that the garnishment order (Item 7) refers to SOR debt 1.f, despite the fact that the account number alleged in SOR 1.f does not correspond to the account number in Item 7.

¹⁴¶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;

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

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