



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-01622
)
Applicant for Security Clearance)

Appearances

For Government: Douglas M. Velvel, Esquire, Department Counsel
For Applicant: *Pro Se*

09/15/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 August 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 15 January 2016, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 11 April 2016.

¹Consisting of the File of Relevant Material (FORM), Items 1-8.

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. He is a 63-year-old senior engineer technician employed by a U.S. defense contractor since September 1994. He seeks to retain the security clearance he appears to have held since June 1978. He has no history of security violations. The record does not reflect when his most recent clearance was granted.

The SOR alleges that Applicant filed a Chapter 13 bankruptcy petition in March 2014 that had not yet been discharged (SOR 1.a) and owed over \$70,000 in education loans (SOR 1.b). Applicant's amended plan was confirmed in January 2015 (Item 8), and specifically excludes any provision for his education loans. Applicant provided no documentation that he was making plan payments as required; however, the Government did not establish that the education loans were delinquent. Applicant's approved wage earner plan (Item 7) required him to pay about \$42,000 over five years, \$2,533 monthly for seven months, then \$458 monthly for another 53 months.

Applicant traces his financial struggles to the 1980s, when he began to help his brother and his brother's family after his brother was stricken with a chronic disease. He cites the financial strains placed on his family when his first daughter went to college in 2000 and his second child went to college in 2004. His wife lost her job about 2008, although he says nothing about whether she got a new job, or was even looking. His oldest daughter moved home with her children when she lost her job, but Applicant does not state when this occurred.

Applicant's December 2012 credit report (Item 5) reflects many collection accounts that had been paid or settled for less than the full amount. His August 2015 credit report (Item 6) reflects debts placed in his initial Chapter 13 petition that may have been resolved by the time of his amended petition in March 2014.

Applicant provided no budget or personal financial statement indicating his family's financial situation. He has not documented any credit or financial counseling. He provided no work or character references, or evidence of civic or 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.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to submit sufficient evidence to mitigate the security concerns. Applicant has a history of financial difficulties, which are ongoing, and seem unlikely to be resolved any time soon.⁴ Applicant's financial problems appear to date from at least the 1980s, when he began providing financial support to his ill brother.

Setting aside for the moment the questions whether the financial expenditures that led to the financial issues were reasonable and whether the Chapter 13 bankruptcy filing was appropriate,⁵ Applicant has not mitigated the security concerns because he has not provided any evidence of the current status of his wage earner plan or his education loans.

Applicant only partially meets the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; and the circumstances under which they occurred appear to be ongoing.⁶ Moreover, assuming that Applicant's financial strains might be considered beyond his control, and that his wage earner plan was appropriate, he has not demonstrated that he has been responsible in addressing his debt.⁷ Applicant's response to the FORM was due in

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

⁵Applicant undertook the bankruptcy filing after his December 2012 clearance application (Item 3) and his January 2013 subject interview with a Government investigator (Item 4).

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

⁷¶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;

January 2016, a year since his plan was approved, yet he provided no proof that he had made the required payments. His education loans raise no security concerns.

Applicant submitted no evidence to show that he received credit or financial counseling, and the absence of any proof of plan payments means that he cannot demonstrate that the underlying debts are being resolved.⁸ Similarly, the absence of any proof of plan payments means that he cannot establish that he has made a good-faith effort to address his debts.⁹ Almost 50% of the required plan payments were due in the first 12 months of the plan.

Moreover, Applicant failed to provide any documentation of his current work evaluations, or work or character references upon which I might base a favorable “whole-person” analysis. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a:	Against Applicant
Subparagraph b:	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

⁸¶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;

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