



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-01907
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: Roger Schlossberg, Esquire

03/28/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 17 October 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 11 April 2016, and I convened a hearing 19 May 2016. DOHA received the transcript (Tr.) 1 June 2016, and the record closed.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-K.

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 allegation. He is a 66-year-old company owner who requires a clearance for his company to provide training for classified Government missions. He is a successful businessman (AE A-J; Tr. 71-90). This is a periodic reinvestigation of a clearance he claims to have received in 2008 or 2009 (GE 1; Tr. 31).

The SOR alleges, and Government exhibits (GE 1-3) establish, one delinquent time-share account totaling \$22,254.³ Applicant did not report this account on his July 2014 clearance application (GE 1),⁴ and initially denied having any financial accounts he was required to disclose during his October 2014 interview with a Government investigator (GE 2). When he was confronted with the debt, Applicant stated that it was for unpaid maintenance fees related to the purchase of a time share in a foreign country in April 2005.⁵ Applicant stated that he had no intention of paying the debt.

In 2004 or 2005, while on a family vacation in a foreign country, Applicant attended a time-share solicitation. Impressed with the presentation, he bought two time shares for \$30,000 each, charging \$30,000 to his credit card, and paying the balance when he returned home. (Tr. 33-34). He signed a contract, but does not remember what he signed, and did not read the fine print (Tr. 41-42). He first experienced problems with using the time share the next year (Tr. 35-36). When he experienced the same problems the following year, he concluded that he had been duped. He paid the yearly maintenance fee for two or three years (about \$3,000 annually for the two units) (Tr. 43-44, 48), but then decided to stop paying. He has not made any payments in about seven years (Tr. 38).

Although Applicant has received telephone solicitations to sell his interest in the time share, he has not done so.⁶ Nor has he considered taking legal action against the time share (Tr. 39). He has never tried to contact the creditor (Tr. 49), although he still receives annual invoices for the maintenance fees (Tr. 44). The foreign country has contacted him by telephone on several occasions about a fraud investigation into the time share company, but Applicant has not been interested (Tr. 48, 53). In January 2016, the foreign country sent Applicant the necessary form to participate in the fraud

³Applicant's August 2014 credit report (GE 3), states that the account was opened in November 2004, and last acted upon in January 2008. The creditor is located in the United States (U.S.).

⁴The account does not appear on Applicant's September 2012 (AE E), June 2014 (AE F), and May 2015 (AE G) credit reports because each of those reports are by a different credit bureau than the one that reported the debt on his August 2014 credit report (GE 3).

⁵During his interview, Applicant stated that he paid \$60,000 for the time share, using his credit card. He described in detail that he thought he had been the victim of fraud in purchasing the time share. He also stated that he was contesting the fees with the time share company. He did not know if the time share was owned by a foreign or U.S. company.

⁶Believing, perhaps correctly, that the solicitations were more scam than legitimate offer.

investigation (AE K). Applicant never followed up with the investigation, and he could not say why not (Tr. 55).

Applicant has documented no credit or financial counseling, but his financial documents and tax returns (AE B-J) prove that money is not the limiting factor. 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).

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, and Applicant did not mitigate the security concerns. The Government established over \$22,000 in delinquent debt that Applicant simply walked away from.⁸ In this instance, Applicant has the means to satisfy this debt, but is unwilling to do so.

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

⁸¶19(a) inability or unwillingness to satisfy debts;

