



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



In the matter of:)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-02192
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esquire, Department Counsel
For Applicant: *Pro se*

03/30/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 6 November 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 13 April 2016, and I convened a hearing 2 June 2016. DOHA received the transcript (Tr.) 7 June 2016.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibits (AE) A-E. AE D-E were timely received post hearing. The record in this case closed 11 July 2016, the day Department Counsel indicated no objection to AE E.

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 46-year-old steam fitter employed by a defense contractor since January 2010, a job which requires this clearance. He also owns two companies, an air duct company he started in October 2006 (GE 1), and a construction company he started in May 2015 (Tr. 28). He does not earn significant income from his companies.

Applicant married in June 1995, and has a son born in September 2003. He seeks to retain the clearance he obtained in November 2007, and which was upgraded in April 2008, after a favorable adjudication in March 2008.³ This appears to be a periodic reinvestigation of that clearance.

Applicant's March 2008 decision was based on a September 2007 SOR that alleged five delinquent debts, one of which was paid before the SOR was issued, and four of which were included in a Chapter 13 bankruptcy plan filed on 19 July 2007 and confirmed on 19 November 2007 (GE 6). Applicant was to pay the trustee \$850 monthly. After his 18 December 2007 hearing, the judge found that Applicant was making the payments as required. Since the SOR debts had either been paid, or included in the current Chapter 13 plan, and Applicant had caught up on some non-SOR debts that had fallen delinquent during the pendency of the Chapter 13, the administrative judge granted Applicant's clearance. The Chapter 13 bankruptcy trustee's 9 April 2010 periodic report to debtor (AE C) showed that Applicant paid \$27,410.30 to the trustee, reducing his base minimum required payment from \$51,080 to \$23,669.70.⁴

Applicant reported his Chapter 13/Chapter 7 bankruptcy case on his July 2012 clearance application (GE 1),⁵ along with \$6,500 in delinquent Federal taxes for tax years 2009-2010 that he had been paying since April 2009.⁶ He did not report the SOR debts he thought were included in his Chapter 7 discharge.

Beyond the 2008 DOHA decision, the SOR alleges, GE 1-6 establish, and Applicant admits, three delinquent debts totaling \$15,700 (SOR 1.a-1.c). Applicant also admitted that the Chapter 13 bankruptcy plan that had been favorably adjudicated in March 2008 had been converted to a Chapter 7 bankruptcy case on 7 June 2010, the

³ISCR Case No. 07-06530, 28 March 2008. Except as noted herein, I incorporated the March 2008 decision by reference.

⁴Although Applicant could have satisfied his remaining creditors with a \$19,472.17 payment,

⁵In the amount of \$517,000.

⁶He stated that his payment plan was \$200 monthly, and he was deducting \$50 weekly from his paycheck. Applicant's 20 April 2016 (AE A) and 15 June 2016 (AE C) Internal Revenue Service (IRS) monthly statements show that Applicant is current on his payments, which are now for tax years 2011-2012, and his balance is declining.

Chapter 7 trustee had filed a report of no distribution on 15 July 2010, and the case had been discharged on 15 September 2010 (SOR 1.d).

Applicant's 9 December 2015 Answer (Answer) stated that the April 2010 judgment for \$240 (SOR 1.a) had been included in his Chapter 7 bankruptcy. However, Applicant did not submit his Chapter 13/Chapter 7 schedules to confirm that claim. The Chapter 13 bankruptcy trustee's 9 April 2010 periodic report to debtor (AE C), does not list this account. At hearing, Applicant acknowledged that this debt was not in the bankruptcy (Tr. 53-56). After the hearing (AE D), Applicant discovered that the judgment was for a parking ticket for a vehicle owned in 2008, and not included in his bankruptcy discharge. He paid the ticket on 6 July 2016 (AE E).

Applicant also stated that the May 2007 tax lien for \$12,566 (SOR 1.b) had been included in his Chapter 7 bankruptcy. That allegation was based on an entry in Applicant's July 2012 credit report (GE 3) which did not identify the creditor except by address. However, during his 23 October 2012 interview with a Government investigator (GE 2), Applicant identified this tax lien as belonging to a local Government,⁷ and this creditor appears in AE C as the local government office of tax and revenue with a stated claim amount of \$12,451.85 and a current balance of \$2,550. Applicant testified that the delinquent taxes date back to 2005, when he lived in the locality. He stated that his contacts with the locality indicated that the current balance was about \$1,100, but he provided no proof of that claim and had no plans to pay the debt off (Tr. 40-43).

Finally, Applicant stated that the July 2013 judgment for \$2,893 (SOR 1.c) had been paid on 22 December 2014. That judgment appears on Applicant's February 2015 (GE 4) and February 2016 (GE 5) credit reports along with a June 2013 judgment for \$1,326 by the same creditor. Each case has a distinct case number. Applicant's Answer contains a 23 December 2014 court record that a case number corresponding to the June 2013 judgment was satisfied by garnishment order issued on 12 March 2012. Applicant submitted a 2 March 2016 merged in-file credit report (AE D) showing four different accounts, each with a zero balance and no money past due. AD D does not show when the accounts were paid.

The tale of Applicant's financial problems began in 2006, when he bought a house that was on the high end of what he could afford. This was at the height of the housing market. He was not particularly worried that making the payment was a stretch for him because he was expecting a new job and anticipated that he would be able to refinance the mortgage into a more manageable payment in a couple of years (GE 2). The new job never materialized and the crash of the housing market meant he could not refinance the mortgage, resulting in the April 2007 Chapter 13 bankruptcy filing (Tr. 32-33). The Chapter 13 portion of the bankruptcy failed because he was helping his sister

⁷He told the investigator that he had been paying the local government \$100 monthly, but stopped when he moved to his new home in another locality (Tr. 44). He assumed the taxes had been resolved by his bankruptcy discharge because he did not hear from the local government after his bankruptcy discharge.

take care of their elderly mother in the mother's house. His mother and sister now live with him.

Applicant takes home about \$1,100 weekly. He gets overtime in his job, but has not been getting a lot of it lately. Consequently, the \$1,100 is on the low end of his annual income, which ranges from \$87,000 to \$140,000 annually. He estimates that his wife takes home \$2,500-2,600 bi-weekly. They have about \$400-500 positive monthly cash flow (Tr. 59-67).

Although not alleged in the SOR, Applicant has ongoing issues with his Federal taxes. When he submitted his clearance application, his delinquent taxes were for 2009-2010. His current payment plan is for 2011-2012 (AE A, D). He owes Federal taxes every year because he has not adjusted his withholding to cover what he owes. Consequently, he incurs late-payment penalties and interest (Tr. 46-52). The IRS just rolls the new tax debt into his payment plan. However, Applicant does not believe he owes for 2013-2014 (AE D). He was on an extension and had not filed his 2015 taxes (Tr. 51).⁸

Applicant had the financial counseling required by his bankruptcy filings. He did not provide a budget. 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.

⁸Because the tax issues were not alleged in the SOR, I have not considered them on the merits of this case. However, I have considered them on the general issue of Applicant's credibility, absence of mistake, or evidence of plan or pattern.

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.⁹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has had significant financial problems since before his March 2008 clearance decision and has continued to have them since.¹⁰ Applicant continued to make the required Chapter 13 bankruptcy plan payments for three years until he became unable to make the payments because of the financial assistance he was providing to his sister and elderly mother. Applicant converted his Chapter 13 bankruptcy plan to a Chapter 7 bankruptcy discharge in April 2010, and was discharged of his dischargeable debts in September 2010. However, although his local tax lien was included in his Chapter 13 bankruptcy plan for purposes of paying off the debt, he had to have known, based on his bankruptcy financial counseling that the debt could not be discharged along with his other debts. Applicant took no steps to learn the status of this debt until after he received the SOR, and did not provide evidence of the claimed status. Moreover, Applicant continued to have financial problems after his fresh start. He had a judgment for a parking ticket that was not included in his bankruptcy discharge, and he acquired two new judgments in June and July 2013.¹¹

In addition, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are recent, not infrequent, and ongoing.¹² While the circumstances that caused the indebtedness that was addressed in the 2008 decision were beyond his control, part of the rationale for granting his clearance was the fact that he was resolving those debts through a Chapter 13 bankruptcy plan, which would pay at least some of the indebtedness. However, his inability to maintain the payments was because of his decision to provide financial support to his sister and elderly mother, a difficult choice, but a choice nevertheless. That choice caused him to convert his bankruptcy plan to a bankruptcy discharge which was accomplished in

⁹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

¹¹Because the June 2013 judgment was not alleged in the SOR, I have not considered it on the merits of this case. However, I have considered it on the general issue of Applicant’s credibility, absence of mistake, or evidence of plan or pattern. Furthermore, record evidence shows that this judgment was satisfied, by garnishment, before the SOR was issued.

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

September 2010. Notwithstanding his new start, he acquired new debt after the hearing and let that account not only fall delinquent, but be reduced to judgment. He was partially responsible with the un-alleged June 2013 judgment because he satisfied it by garnishment before the SOR was issued. However, his resolution of the alleged July 2013 judgment is not as clear, because while his merged in-fille credit report suggests that it has been satisfied, it does not establish when it was satisfied.¹³ Further, he did nothing to investigate the status of his local tax lien after his bankruptcy discharge, and having ostensibly learned its current status, states an intent not to pay it, which is hardly a good-faith effort to resolve it.¹⁴

The concern with Applicant is that any action taken to address the SOR debts was undertaken after the SOR was issued. One debt was paid after the hearing; one debt was paid at an unknown date; and a third has not been addressed at all. The Government is not the collection agent of last resort. The Government expects applicants to deal with their delinquent debts because of their legal and moral obligation to do so, not because they face the risk of adverse administrative action. He has stated no intent to resolve his remaining local tax lien, and certainly has not demonstrated that this delinquent debt is being resolved in an expeditious manner.¹⁵ Further, he has no work or character references to establish a “whole-person” analysis supporting a favorable clearance action. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-c:	Against Applicant
Subparagraph d:	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

¹³¶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;

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

¹⁵¶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;