



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 15-02732
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison P. O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

12/05/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 7 October 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 3 March 2016 and I convened a hearing 28 April 2016. DOHA received the transcript 11 May 2016.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, hearing exhibit (HE) I, and Applicant exhibits (AE) A-E. AE E was timely received post-hearing. The record in this case closed 11 May 2016, when Department Counsel stated no objection to the exhibit.

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 41-year-old information assurance technologist employed by a defense contractor since June 2014. He was employed briefly in a similar position from April to June 2014. He served on active duty in the U.S. military from May 1994 to May 2014, retiring in pay grade O-3. He seeks to retain the clearance he has held, as necessary, since May 1994, as updated in October 2010 (GE 1).

The SOR alleges, Government exhibits (GE 1-3) establish, and Applicant admits two delinquent debts totaling \$68,000. The bulk of the debt was for a delinquent first mortgage on a home in foreclosure, \$60,733 past-due on a \$143,889 balance (SOR 1.a). The remaining debt was for a \$7,300 deficiency on a motorcycle (SOR 1.b). In April 2016, Applicant's lender informed him that it would not pursue the \$78,117 foreclosure deficiency (AE A). In May 2016, the creditor for SOR debt 1.b confirmed that Applicant settled the debt for less than the full amount in May 2013, and stated that it would be reporting that fact to the credit reporting agencies (AE E). However, the creditor apparently did not do so (GE 2, 3; AE D).

In 2006, Applicant and his wife bought a home near his current duty station. In summer 2008, Applicant received three-year, accompanied orders³ to a duty station outside the U.S. That duty station was a high operations tempo duty station,⁴ as well as a high cost area.

When Applicant received orders overseas, he tried to sell his house for over a year, but in 2008, the economic recession was in full bloom. Initially, Applicant was able to continue making payments on the mortgage. However, the birth of his second child in May 2009, along with the high cost of living, tightened Applicant's finances, notwithstanding that his family lived in Government housing and received allowances designed to mitigate some of the extra costs.

By late 2009, Applicant's sister had helped him find a tenant for the house, but Applicant gave the tenant a break on the rent until January 2010 because of necessary repairs Applicant needed to make to the house. The tenant made about three payments, then stopped paying the rent. Neither Applicant nor his sister was able to make contact with the tenant. Applicant's operations tempo made it difficult to pursue any action while he was overseas.

In summer 2011, Applicant received orders back to the continental U.S., but not to the duty station where he owned his home. Applicant was able to check on the property in person a couple of times, but was unable to locate the tenant on either of his visits. He learned what steps he needed to take to evict the tenant, but decided not to

³Accompanied orders means that Applicant's wife and child moved overseas with him.

⁴Meaning that Applicant spent much time training in the field with his unit, compared to having office duty.

pursue eviction while he was still in the military. In October 2015, Applicant sued the tenant for possession, and obtained an uncollectible \$12,000 judgment against her (AE B). However, by that time the home was in foreclosure (GE 2, 3). Nevertheless, the lender worked with Applicant, resulting in the settlement reflected in AE A.

Similar financial considerations caused Applicant to fall behind on his motorcycle payments. Applicant had left the motorcycle with a friend, but apparently the lender never sought to repossess it. As reflected in AE E, Applicant settled with the lender in May 2013.

Applicant currently earns about \$113,000 annually, plus another \$40,000 retired pay. Except for the two SOR debts, Applicant's credit reports show that all his accounts are current. Applicant documented no credit or financial counseling. He did not provide any work or character references.

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.⁵

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant's summer 2008 military orders to a high-cost, high operations tempo, overseas duty station, and the birth of his second child in May 2009 left him unable to continue with his mortgage and motorcycle payments. The 2008 economic downturn scuttled his efforts to sell his home, and an unreliable tenant torpedoed his backup plan for keeping his finances in order.⁶

Nevertheless, the mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, the circumstances that caused them are less likely to recur.⁷ When his military orders took him overseas, a circumstance beyond his control, he first attempted to sell his home, then attempted to rent it. Neither attempt was successful, but both were responsible. He could not have foreseen the 2008 economic downturn, and plenty of people saw their financial circumstances tighten. Nor could he have foreseen that his tenant would prove unreliable. Moreover, he began addressing his delinquent debts even as his finances deteriorated. When he could not sell his home, he tried to lease it. He took steps to settle his motorcycle debt.⁸ While there is no evidence that Applicant has had any financial or credit counseling, he has clearly acted to get his finances under control.⁹

Overall, Applicant took responsible steps to resolve the SOR debts.¹⁰ His other accounts are all current. 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.¹¹ Applicant's efforts to date constitute such a plan, and his successful efforts to resolve the SOR debts reflect significant actions. I conclude Guideline F for Applicant.

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

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

⁸¶ 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;

⁹¶ 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;

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

¹¹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-b: 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