



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-03688
)
Applicant for Security Clearance)

Appearances

For Government: Alison Patricia O'Connell, Esquire, Department Counsel
For Applicant: Pro Se

03/24/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 9 November 2015, the Department of Defense (DoD) issued an 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 7 July 2016, and I convened a hearing 25 August 2016. DOHA received the transcript (Tr.) 2 August 2016.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibit (HE) I, and Applicant exhibit (AE) A-C. AE CA was timely received post-hearing. The record closed 7 September 2016, when Department Counsel stated no objection to AE C.

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 allegations, except for 1.c. He is a 32-year-old associate analyst employed by a defense contractor since May 2010. He has not previously held a clearance, but had a favorable public trust determination in May 2010. He married in June 2016 (Tr. 29), and has two stepchildren and a four-year-old daughter with his wife.

The SOR alleges, and GE 2-4 establish, two delinquent debts totaling nearly \$15,000. Applicant admits two debts totaling over \$13,000. He also admits failing to file his 2006 Federal income tax return (SOR 1.a). He claimed to have been unaware of that fact until he had some problems with his 2011 returns, yet he did not file his 2006 return until 2013 (Tr. 34). Applicant provided no proof of that claim. His documentation that a June 2012 state tax lien was satisfied in March 2014 (AE B, C) does not corroborate his claim that the tax lien was somehow related to his 2006 Federal income tax return.

SOR debt 1.b is the deficiency amount remaining on a vehicle owned by Applicant that was repossessed and sold in May 2010 (GE 6).³ Applicant's May 2010 credit report (GE 4) reflects the full charged-off amount before the sale. Applicants August 2013 (GE 3) and March 2015 (GE 2) credit reports reflect that the credit bureaus investigated Applicant's dispute and resolved it in favor of the creditor—a conclusion Applicant disputed. Applicant provided no corroboration of his claimed disputes (Tr. 38-39).

SOR debt 1.c is a delinquent education loan that was inadvertently omitted from Applicant's consolidation of his education loans, which are otherwise current (AE A). In March 2014, Applicant entered a rehabilitation agreement with the lender, and made the required monthly payments between March and November 2014 (AE C). He did not document whether he is now current.

SOR debt 1.d was a final utility bill that became delinquent when it was not forwarded to Applicant's new address. Applicant paid the bill in January 2016, after he

³Applicant has given conflicting explanations about his level of understanding concerning the consequences of having his vehicle repossessed. In his June 2010 interview with a Government investigator (GE 6), he stated that after his vehicle was repossessed, he contacted the dealer about payment arrangements, but was told that the vehicle was about to be sold and that he would be responsible for the balance owed after the sale. In November 2010, Applicant told the investigator that when he called the dealer, the dealer wanted all the remaining balance for Applicant to redeem the vehicle. He also stated that he no longer owed the dealer any money because it was settled once his vehicle was taken and sold. In August 2013, Applicant told the investigator that the dealer wanted \$13,000 to redeem the vehicle, but Applicant could not afford that amount. He claimed that he was unable to locate the current holder of the debt. However, in his January 2016 Answer, Applicant reiterated his questionable claim that he was no longer responsible for the vehicle debt because the dealer had repossessed and resold it. He repeated the claim at hearing (Tr. 27, 35-39, 44-48). He provided no documentation that would justify the claim.

became aware of it (AE C). Applicant reported his failure to file his Federal income tax return and his vehicle deficiency balance on his July 2013 clearance application (GE 1).

Applicant traces his financial problems to not making enough money in his job and falling behind on his bills (GE 6). Except as noted in the SOR, Applicant brought all these delinquent debts current.

Applicant has not had any credit or financial counseling. He provided no current budget. Applicant has not been in contact with any of his creditors recently. He provided no work or character references, and provided no 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.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant failed to document that he

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

filed his 2006 Federal income tax returns, and has deliberately failed to address the deficiency amount on an automobile repossessed in May 2010.⁵

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, and the stated cause cannot be considered unlikely to recur because the automobile deficiency remains unresolved due to Applicant's intransigence.⁶ Applicant's previous low income may be considered a circumstance beyond his control, but even if it could be so considered, Applicant has not been responsible in dealing with his debts. He has simply ignored the automobile deficiency.⁷ His stated reason for failing to pay the deficiency is incorrect. He has taken no action to address this debt.⁸

In addition, Applicant has received no credit or financial counseling. He has no budget. Consequently, it is clear that the automobile debt is not being resolved.⁹ Further, Applicant provided no character or employment evidence to reasonably support a "whole person" analysis in favor of granting his clearance. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraphs a, b:

Against Applicant

Subparagraphs c, d:

For Applicant

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same

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;

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

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;

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