



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



In the matter of:)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-04393
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Donna Price, Esquire

03/27/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 7 December 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 16 August 2016 and I convened a hearing 12 October 2016. DOHA received the transcript 18 October 2016, and the record closed.

¹Consisting of the transcript (Tr. I), Government exhibits (GE) 1-3, and Applicant exhibits (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 admitted the SOR financial allegation. She is a 47-year-old program manager employed by a defense contractor since August 2010. She seeks to retain the clearance she has held since April 2002, apparently without incident (GE 1).

The SOR alleges, Government exhibits (GE 1-3) substantiate, and Applicant admits, two charged-off credit cards totaling over \$33,000. She did not specifically report these debts on her June 2013 clearance application (GE 1), but disclosed generally that she had experienced financial problems which caused her to use the services of a debt relief program from about May 2011 to April 2014 (GE 1; Answer). She ascribed her financial problems to two periods of unemployment she experienced in the 13 months before she obtained her current job, and an increase in their adjustable rate mortgage.

Applicant used the debt relief program to resolve a number of delinquent debts not alleged in the SOR (AE B-G). The two debts alleged in the SOR were also entered into the debt relief program. However, the creditor at SOR debt 1.a would not agree to a settlement. Instead, in tax year 2014, the creditor cancelled \$16,125.38 of the \$31,340 debt and issued Applicant a Form 1099-C resolving the debt (AE A). Nevertheless, in April 2016, Applicant reached a settlement with the creditor to voluntarily pay \$6,268 by making \$156.70 monthly payments for 40 months, beginning in July 2016 (AE A). Applicant established a direct, bi-weekly payment to correspond with her pay dates, and has made seven payments through the first payday in October 2016.

In July 2012, the debt relief program informed Applicant that it had reached a settlement with the collection agent for SOR debt 1.b (Answer; AE A), agreeing to pay \$1,052.17 of the \$2,630.40 balance.³ The debt relief program made two payments as required, but the final payment was not collected due to a disconnect between the creditor and its collection agent. Applicant was not aware of this fact until she received the SOR. She has tried, without success, to resolve the remaining \$300 through any of the participants in the 2012 settlement; she has the means to pay the debt if she can find the proper party to pay (Tr. 74-76).

Applicant and her husband make about \$158,000 annually (Tr. 83); AE J). She and her husband have over \$216,000 in their retirement accounts, and they have \$1,137 positive monthly cash flow (AE J). She has extensive character references who recommend her for her clearance, and has received significant job performance recognition (Tr 19-50; AE I). Her credit reports reflect substantial improvement in her financial situation since she was unemployed (AE H).

³The SOR incorrectly alleged the outstanding balance, using the \$1,726 high credit amount listed in Applicant's June 2013 credit report, instead of the \$2,026 past due amount (GE 2).

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.⁴

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant's unemployment periods coincided with an increase in their adjustable rate mortgage in 2009-2010, and they became delinquent on a number of accounts.⁵ However, as soon as she was comfortably in her new job, she and her husband engaged the services of a debt relief program in May 2011. Her June 2013 (GE 2) and April 2015 (GE 3) credit reports reflect the significant progress she was already making on her delinquent accounts.

The two delinquencies alleged are the only two accounts not reflected as fully resolved at the time of the SOR. Nevertheless, Applicant believed them to both be resolved when the SOR was issued. She had received a Form 1099-C from the SOR debt 1.a creditor for 2014, and had confirmed with the debt relief program that no further action was necessary. She had received confirmation from the debt relief program in July 2012, that the creditor had accepted a settlement offer, which she then believed the

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

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

debt relief program had paid in due course. It was not until after she received the SOR that she learned that only two of the three required payments had been made. She is able to pay the remaining debt if she can locate a creditor able to accept payment. Moreover, she revived an otherwise uncollectible debt that she had been advised was no longer valid, and arranged a repayment plan of a significant settlement amount.

The mitigating factors for financial considerations give Applicant substantial aid. While her financial difficulties were multiple, they were not recent, and the peculiar circumstances that caused the problem are unlikely to recur.⁶ Further, her financial problems were fully due to circumstances beyond her control—her unemployment periods and increased mortgage payment—and she acted quickly once she regained employment to begin resolving all of her delinquent accounts, and had them substantially, if not arguably completely, resolved by the time the SOR was issued.⁷ While there is no evidence that Applicant has had any financial counseling, she clearly acted responsibly to improve her finances.⁸ Moreover, she could hardly have dealt with her creditors in greater good faith than to seek professional help and act to resolve her debts once she had the means to do so.⁹

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.¹⁰ Applicant's efforts to date constitute such a plan, undertaken with substantial success not only before the SOR was issued, but before she even applied for periodic reinvestigation of her clearance. Whatever may remain of the two SOR debts, they must be considered to be on their way to final resolution, if not already resolved, and raise no continuing security concerns. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:

FOR APPLICANT

Subparagraphs a-b:

For Applicant

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 (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.

¹⁰ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

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