



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



In the matter of:)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-04871
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

03/01/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 30 December 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 19 October 2016, and I convened a hearing 30 November 2016. DOHA received the transcript (Tr.) 9 December 2016.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibits (AE) A-C AE B-C were timely received post hearing. The record closed 14 December 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 SOR financial allegation 1.a, and denied allegation 1.b. He is a 53-year-old resident engineer employed by a defense contractor since January 2015. He has also worked part-time as a security monitor since December 2014. He worked full-time as a systems integrator from March 2010 to November 2012, and in a similar position as a systems engineer from January 2013 to January 2015, when he obtained his current job. He seeks to retain the clearance he was issued in November 2007.

The SOR alleges, and Government exhibits (GE 1-5) establish, two delinquent debts totaling nearly \$215,000. Applicant admits the second mortgage delinquency in SOR 1.a, but denies the \$500 debt in SOR 1.b. According to a December 2016 letter from the creditor for SOR debt 1.a (AE C), Applicant entered into a repayment agreement on this account in February 2016. He did not corroborate his claim that he made contact with this creditor before the SOR was issued (Answer; Tr. 24).³ He paid SOR debt 1.b in January 2016 (AE B), but did not corroborate his claim that he contacted the creditor in October 2015 to discuss this debt (Answer).⁴

From January 2000 to October 2009, Applicant was self-employed as a federal contractor. Business was good. He paid himself \$225,000 annually, and paid his wife \$60,000 annually (Tr. 46). In January 2003, Applicant and his wife bought a home with a \$183,244 Veterans Administration (VA) guaranteed loan (GE 3).⁵ They lived in that home until August 2007, when they bought a second home, financed with a \$622,500 first mortgage.⁶ In July 2007, Applicant obtained a \$248,000 second mortgage on his first home. Applicant never stated what he used those funds for.⁷ Applicant testified (Tr. 55-57) that his wife and mother were supposed to sell the first home, but they never did. The house was never offered for rent. However, Applicant was able to keep up payments on the second mortgage through November 2012 (GE 4, 5). Nevertheless, the lender had started procedures for short sale of the property in 2013, and completed the process with the VA to relieve Applicant of his responsibility for the first mortgage in November 2013 (Tr. 40-41, 55).

In October 2009, Applicant's business failed because the prime contractor on the contract that employed his company did not renew the contract, and directly hired

³Applicant's 22 January 2016 Answer stated that he had an appointment with the creditor in early February 2016 to discuss reinstatement of loan payments.

⁴He stated that after contacting the creditor in October 2015, he still forgot to pay the debt (Answer).

⁵Applicant was eligible for a VA-guaranteed loan because of his military service from June 1981 to August 1993, when he was honorably discharged (GE 1).

⁶In May 2011, the loan was 120-days past-due, and was sold to another lender (GE 3). In July 2012, the new lender reported the account current, with a high credit of \$772,800 and a balance of \$645,208 (GE 3).

⁷The timing alone suggests that the cash was used for the August 2007 purchase of the second home.

Applicant's employees away from him (Tr. 34-35). Applicant was unemployed until March 2010, when he obtained a job that paid him \$125,000 annually. His wife remained unemployed until March 2011, when she obtained a one-year position that paid \$36,000 annually (Tr. 47). Applicant worked for this employer until November 2012. He received minimal cost-of-living increases during this time.

Applicant was unemployed again until January 2013, when he obtained a job which paid \$132,000 annually. He held this job until January 2015, when he obtained his current job. In the meantime, he took a part-time job in December 2014. His current job pays \$155,000 annually, plus a \$10,000 annual bonus (Tr. 48). He also receives \$1,200 monthly disability pay from his military service (Tr. 30), or another \$14,400 annually.

Applicant disclosed two debts on his July 2012 clearance application (GE 2), and three additional debts on his April 2015 clearance application (GE 1). None of these debts are at issue in the SOR. Applicant's credit reports (GE 3-5) reflect that many of these accounts were delinquent but are now current, or paid.

Applicant has documented no credit or financial counseling, and has not presented 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.

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.⁸

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has nearly \$215,000 in delinquent debt pending since at least November 2012.⁹ The record is clear that Applicant did not pay SOR debt 1.b until 15 January 2016 (AE B), and did not enter into a repayment plan on SOR debt 1.a until 20 February 2016 (AE C), both dates after he received the SOR. Applicant did not corroborate his claims that he had contacted both creditors before he received the SOR.

In addition, Applicant does not fully meet any of the mitigating conditions for financial considerations. His financial difficulties are recent, and not infrequent. To the extent they are due to his unemployment, they may be unlikely to recur; however, to the extent they are due to his mishandling his home ownership after 2007, they may recur.¹⁰ His unemployment was certainly beyond his control, but his handling of his home ownership was not. Buying a new, apparently more expensive home in August 2007 was a deliberate, perhaps sensible, choice. But not acting to address the status of his first home was also a deliberate choice. He certainly knew fairly quickly that his wife had not undertaken to sell the home, because he continued to pay the mortgages. Not acting to rent the house or be more involved in its sale was irresponsible. Moreover, Applicant has not explained why he took out a nearly \$250,000 second mortgage in July 2017, a month before he bought the second house. Without an explanation, taking on about \$1,000,000 in new debt is¹¹ without a plan for dealing with the first home irresponsible. Moreover, once he lost his job and took a substantial pay cut when he became re-employed, his plan for dealing with his first home appears to have been essentially a strategic default, given that the VA guarantee would absolve him of any deficiency on the first mortgage, if not the second.¹² Such a plan does not constitute a good-faith effort to pay his debts, although Applicant certainly made a good-faith effort to resolve other debts not alleged in the SOR.¹³

⁸See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

¹¹A \$772,800 first mortgage on his new home, plus a \$248,000 second mortgage on his first home, equals \$1,020,800.

¹²¶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;

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

Applicant's efforts to resolve the two SOR debts appear to have been undertaken only after he received the SOR. 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. This is especially so where the largest debt seems to have been part of a deliberate choice of strategic default. He has not received credit or financial counseling. Obviously, his debt is not under control.¹⁴ Further, he provided no favorable character and work references to establish a "whole-person" analysis supporting a favorable clearance action. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against 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

¹⁴¶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;