



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 15-07667
)	
Applicant for Security Clearance)	

Appearances

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

05/23/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 23 May 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 9 September 2016, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 9 May 2017.

¹Consisting of the File of Relevant Material (FORM), Items 1-15.

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, except for SOR 1.e and 1.g. He is a 48-year-old security officer employed by a U.S. defense contractor since October 2008. He served honorably in the United States military from November 1987 to March 1999. He seeks to retain the clearance he received in May 2009 (Item 5).

The SOR alleges, and Government exhibits (Items 5-12) substantiate, five delinquent debts totaling nearly \$20,000. Applicant admits three debts totaling nearly \$19,000. He also admits receiving a Chapter 13 bankruptcy discharge in November 1994 and a Chapter 7 bankruptcy discharge in March 2001.

The debts comprise a \$1,300 medical judgment obtained in October 2009 (SOR 1.c), a \$17,000 Federal tax lien filed in February 2011 (SOR 1.d), \$1,100 in delinquent utility bills (SOR 1.e and 1.g), and a \$500 medical bill (SOR 1.f). Applicant paid SOR debt 1.c in November 2015 (Answer). His April 2016 installment tax payment reduced his remaining tax balance to \$7,578.67 (Answer). Although he disputed SOR debt 1.e, he stated that it would be paid or removed from his credit report by January 2017. Similarly, he stated that SOR debt 1.f would be paid by January 2017. Finally, he stated that he did not owe SOR debt 1.g, and it had been removed from his credit report.

Applicant disclosed the SOR debts on his July 2014 clearance application (Item 5). He stated that he was unaware of SOR debts 1.e-1.g until he obtained a current credit report in July 2014. He stated that he would pay SOR debts 1.c and 1.e-1.g by January 2015. He acknowledged the debts—including the debts he now denies—during his August 2015 interview with a Government investigator (Item 12). He stated that he had not been in contact with the SOR debt 1.c and 1.e-1.g creditors because he was focusing on keeping up with his Federal tax installment payments. However, he planned to meet with a financial advisor later in the month to discuss the best way forward to address his debts. Applicant provided no information whether he ever consulted the advisor.

Applicant married in February 1988, and took on his wife's pre-marital debt. When they were unable to keep up with the debts, they filed for Chapter 13 bankruptcy protection in October 1990, made the required plan payments, and received their discharge in November 1994 (Item 6). They divorced in September 1999, six months after he left the military and took a job that paid less than he had earned in the military. When he was unable to keep up with his expenses and his obligations under the divorce decree, he filed for Chapter 7 bankruptcy protection in December 2000, and received his discharge in March 2001.

However, he continued to experience financial problems. When he first applied for his industrial security clearance in October 2008 (Item 13), he disclosed several delinquent debts that he had paid. Still, he had a number of unresolved debts that he discussed during a December 2008 interview with a Government investigator (Item 14). His November 2008 credit report (Item 15) shows those delinquent accounts, as well as

many delinquent accounts that had been brought current. Nevertheless, his clearance was apparently favorably adjudicated in May 2009.

Applicant's Federal tax issues arose when the Internal Revenue Service (IRS) audited his taxes in 2009. He had experienced a flood in his basement a year or so before, which had destroyed his tax records. When he was unable to document his claimed deductions, the IRS imposed back taxes, penalties, and interest that resulted in the February tax lien for \$17,000. He also owed taxes for 2011, which were added to his tax debt. Applicant did not document when he entered an installment agreement with the IRS, but his most recent payment shows that he has reduced his tax debt to less than \$8,000.

Applicant had expected that the Department of Veterans Affairs would handle the medical debts at SOR 1.c and 1.f, which were the result of an automobile accident. However, Applicant was aware of the judgment at SOR 1.c, and had entered into a repayment plan with the creditor in 2009 and made a couple of payments. Nevertheless, he was unable to keep up with the payments, and forgot about the debt until he obtained his credit report in July 2014, which is why that debt, among others, was listed on his July 2014 clearance application. He did not dispute any of these debts during his August 2015 interview.

Applicant provided no budget or financial statement. He has not received any credit or financial counseling. He provided no work or character references, or any evidence of community involvement.

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.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant has a history of financial difficulties, which are ongoing.⁴ His efforts to address his debts have met with mixed results.

Applicant’s October 1990 Chapter 13 bankruptcy filing was a prudent and responsible action to help ameliorate his wife’s pre-marital debt after they got married. Similarly, his December 2000 Chapter 7 bankruptcy filing is understandable given his divorce, his reduction in income, and his difficulty meeting his obligations under the divorce decree. Moreover, the passage of time largely renders these bankruptcies devoid of security significance.

Applicant’s Federal tax issues can be considered beyond his control, given his catastrophic loss of the underlying tax records that led to the initial tax lien. Moreover, Applicant has been on an installment plan long enough that he has reduced the initial \$16,945 tax lien more than 55 percent, to under \$7,600, despite having added some tax liability for 2011 to the plan. Finally, despite the fact that Applicant delayed more than a year after “rediscovering” the 2009 medical judgment before paying it, I consider it mitigated because Applicant paid it seven months before he received the SOR.

Nevertheless, the remaining debt, however small, is not mitigated. At a minimum, he was aware of these three debts when he obtained his July 2014 credit report. Since then, he has consistently promised to address his debts, and consistently failed to take any action.

For the debts which remain, Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple; although the circumstance which led to his financial situation may be unlikely to recur.⁵ Applicant’s evidence does not really establish that they were due to circumstances beyond his control, and he cannot be considered to have dealt with them responsibly,

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

having taken no action to contact the creditors.⁶ Moreover, he should have known from his May 2009 adjudication, when he had unresolved debt as well as the two bankruptcies more recent in time, that financial problems were a source of security concerns to the Government.

Applicant submitted no evidence to show that he received credit or financial counseling, and these debts are clearly not being resolved.⁷ There are no signs that Applicant has been in contact with any of these creditors, and thus he cannot establish that he has made a good-faith effort to address these debts.⁸ Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	For Applicant
Subparagraphs e-g:	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

⁶¶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;

⁷¶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;

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