



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-01860
)
Applicant for Security Clearance)

Appearances

For Government: Alison P. O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

04/03/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 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 11 April 2016 and I convened a hearing 20 May 2016. DOHA received the transcript 1 June 2016.

¹Consisting of the transcript (Tr. I), Government exhibits (GE) 1-5, hearing exhibit (HE) I, and Applicant exhibits (AE) A-J. AE J was timely received post hearing. The record closed 3 June 2016, when Department Counsel stated no objection to AE J.

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 allegations 1.a and 1.d. She denied the remaining allegations. She is a 33-year-old senior associate employed by a defense contractor since February 2013. She was not employed from August 2011 to February 2013. She voluntarily left her job in August 2011 to attend a graduate program. She financed that program, in part, through four federally-guaranteed loans she originated in March 2011, September 2011, and August 2012. Before August 2011, she held three full-time positions from May 2005 to August 2011, each at a greater salary and degree of responsibility. She has never married, and has no children. She had a favorable public trust determination in April 2005. She seeks to retain the clearance she was first issued in December 2006, and which was renewed in December 2012 (GE 1).

The SOR alleges, and GE 1-5 substantiate, 14 delinquent debts totaling \$29,000.³ Applicant admits two delinquent debts totaling \$15,877. The admitted debts consist of \$6,100 in delinquent state taxes for 2011 and 2012 (SOR 1.a), which Applicant claimed in her 23 November 2015 Answer were consolidated under an established monthly payment plan with the first payment due 15 December 2015. Applicant provided no proof of payments on this plan, at hearing or in her post-hearing response (AE J). She now states that she believes the stated amounts are incorrect, and has requested tax transcripts from the state (AE J.1.).

The second admitted debt (SOR 1.d) was Applicant's mortgage, on which she was 180-days past-due for \$9,777 on a balance of \$191,453. Applicant obtained a loan modification in May 2014 (GE 5), but was unable to keep up with the payments. She answered that the property was currently pending a short sale to be finalized in December 2015, and provided copies of a 24 April 2015 residential contract for sale, an addendum of clauses, a condominium resale notice, a condominium resale disclosure and transmittal of documents, a short sale addendum, and two additional addendums all with the same date as the contract,⁴ On 2 December 2015, the short sale was approved, provided that closing occurred by 18 December 2015 (AE J.1). However, that contract was terminated in January 2016 (AE B). Applicant obtained a new short sale contract in February 2016 (AE D), but necessary approvals were still being processed ten days before the hearing. Assuming that the sale closes as now scheduled, Applicant would be relieved of this debt at the end of June 2016.

Applicant denied SOR debt 1.b on the grounds that she had paid \$854.18 to the creditor on 30 September 2015 and had paid \$450.18 to the creditor on 15 October 2015, for a total payoff amount of \$1,305.09 (Answer). A 9 February 2016 letter from the collection agent for the SOR debt 1.b creditor states that account has been closed as

³This amount reflects only the \$3,983 past-due balances on five education loan accounts, which otherwise have a combined balance of \$63,533. It also includes the \$9,777 past-due balance on a \$191,453 mortgage.

⁴Settlement was to scheduled within 30 days of bank approval. On 24 September 2015, the settlement date was changed to 11 November 2015 (Answer).

satisfied. However, the letter does not state when the account was paid, and Applicant's 2 February 2016 credit report (GE 2) shows the account still unpaid.

Applicant denied SOR debt 1.c on the grounds that the creditor had obtained a garnishment order in August 2012, which was satisfied in February 2015 (Answer). However, Applicant's exhibit A and J.2 reflect delinquent fees incurred after February 2016 awaiting resolution of the pending short sale. Moreover, Applicant's February 2016 credit report (GE 2) reflects a December 2015 judgment by the same creditor that is not alleged in the SOR. However, the replacement debt was pending resolution with the short-sale closing scheduled for the end of the June 2016.

Applicant denied SOR debts 1.e-1.g and 1.m-1.n on the grounds that these education loans had been consolidated, and were being paid pursuant to the agreed upon payment schedule (Answer). She documented entering a loan rehabilitation program in August 2015, agreeing to pay \$221 monthly beginning November 2015. She owed \$64,988.56 on her consolidated accounts. However, on 26 April 2016, some loans were approved for forbearance (AE E) with an outstanding balance of \$67,145.96 on 19 May 2016. Based on the named creditor and the original loan amount, it appears that SOR debt 1.n is a duplicate of SOR debt 1.f.

The four alleged delinquent education loans actually represent a series of loans Applicant originated between 2006 and 2012, which were all in default at various times before the SOR was issued. AE J.4 chronicles the status of those 24 loans; although the absence of account numbers makes it difficult to match those loans to Applicant's credit reports or her other loan records. Nevertheless, the 24 records reflect that four loans were cancelled and 13 loans were consolidated. Two consolidated loans totaling \$15,000 were in forbearance, with no indication when the forbearance would end. One consolidated loan for \$75,000 was listed as in repayment since April 2016 with a zero dollar monthly payment.⁵ Four loans totaling nearly \$67,000 are listed as beginning repayment in May 2016, with a \$932 combined monthly payment.

Applicant variously denied SOR debts 1.h-1.l as paid off, charged off with Form 1099 (income) issued, unverifiable, or disputed. However, she provided no documentation for the claimed statuses.

Applicant attributed her financial problems to leaving her job to go to graduate school. Her finances were further complicated when she left graduate school after a year or so because her mother was ill, and she was unable to obtain a new job until February 2013. Her finances were still further complicated when she was injured in an

⁵This loan record is missing the second page that would indicate when the loan originated and the names of the financial and educational institutions involved in making the loan.

automobile accident in July 2014 and lost about 24 days work (AE F).⁶ She was also providing financial support to her older, adult brother for legal fees he owed.

Applicant reported her tax problems, mortgage and related loan issues, some delinquent debts, and some efforts to obtain resolution of her debts on her December 2013 clearance application. She retained the services of a credit repair company (AE C)⁷, but it is not clear what, if any benefit she obtained. She has good work evaluations (AE H) and has received work recognition (AE G). However, she did not provide any evidence of the financial or credit counseling she may have received. She 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.⁸

⁶However, she sued for her injuries, and obtained a payment of \$25-30,000. She does not recall how money she netted after medical expenses and attorney's fees (Tr 51-53).

⁷The agreement is undated, however, she listed the company on her December 2013 clearance application (GE 1).

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

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Her financial problems were the direct result of a conscious decision she made in August 2011 to attend graduate school. That her finances were further complicated by circumstances beyond her control (her mother's illness and her accident) and within her control (helping her brother) does not ameliorate this initial decision to go to graduate school.⁹

Applicant only partially meets the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and have not ended; so they cannot be considered unlikely to recur?¹⁰ Her initial financial problems were not due to circumstances beyond her control, and while many of her actions taken to resolve the debts might constitute dealing with the debt responsibly (if better documented and pursued to some resolution), the fact that some of the resolved debt has been replaced by new debt and some plans have not been fully finalized means that the debt has not been mitigated.¹¹ For example, she did not document what steps she took to resolve her state tax situation (SOR 1.a).¹² Her July 2011 judgment (SOR 1.b) was paid by garnishment, and possibly not until February 2016, after she received the SOR. Mortgage modification, and later attempted short sale, were not unreasonable efforts to resolve her mortgage-related issues (SOR 1.c-1.d), but the short sale has yet to be finalized, and the number of extensions of time given to close the sale does not inspire confidence that the sale closed after the hearing. I have given Applicant credit for resolving the delinquent education loans alleged (SOR 1.e-1.g and 1.m-1.n) because of their technical status. However, education loans continue to hover over Applicant. She has \$15,000 in indeterminate forbearance status, and another \$75,000 in zero repayment status. She has just begun repayment on another \$67,000 with no established track record. She did not document any of the claimed statuses of the remaining SOR debts (SOR 1.e-1.g and 1.m-1.n)

She did not document how she may have benefitted from the debt resolution firm she retained. She provided no evidence of credit or financial counseling, or a budget to address her current debt plans (education) or future education loan payments, so I

⁹¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations; (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required

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

¹¹¶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;

¹²¶20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

cannot conclude that the SOR debts have been, or are being, resolved.¹³ Moreover, even the recently started loan repayments have insufficient track record to constitute a good-faith effort to satisfy the loans.¹⁴

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.¹⁵ Applicant's efforts to date might have constituted such a plan, but for the shortcomings of her documents. Moreover, the existing "whole person" evidence, while helpful is insufficient to support a "whole-person" analysis arguing for granting her clearance notwithstanding her financial issues. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Subparagraphs e-g, m-n:	For Applicant
Subparagraphs h-l:	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

¹³ ¶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;

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

¹⁵ ISCR Case No. 07-06482 (App. Bd. 21 May 2008).