



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-05506
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro Se*

10/18/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 19 February 2016, 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 7

¹Consisting of the transcript (Tr. I), Government exhibits (GE) 1-7, hearing exhibit (HE) I, and Applicant exhibits (AE) A-B. AE A-B were timely received post hearing. The record closed 28 May 2017, when Department Counsel stated no objection to AE A-B.

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. On 10 December 2016, the Director of National Intelligence (DNI) signed Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017. This decision is issued under the original AG, but I have examined the new AG to ensure that I would not reach a different result if I issued this decision under the new AG. For this case, the principal change to Guideline F is to provide a specific mitigating condition for failing to file required taxes. I would not rule differently under either set of AG.

April 2017 and I convened a hearing 11 May 2017. DOHA received the transcript 18 May 2017.

Findings of Fact

Applicant admitted the SOR financial allegations, except SOR 1.d and 1.f, which she disputed. She is a 40-year-old help desk technician employed by a defense contractor since May 2011. She was unemployed from February-May 2011, when her job was eliminated and she received one month's severance pay. Before that, she was continuously employed from January 2004 to February 2011. She has never married, and has an adult son and a 16-year-old daughter from separate relationships. She claims to have previously held a clearance, but was unable to provide any dates.³

The SOR alleges, and GE 1-7 substantiate, 18 delinquent debts totaling over \$12,000. Applicant admits all but two debts totaling about \$1,500.⁴ She also admits failing to timely file her 2012-2013 state and Federal income tax returns. Applicant reported these financial issues on her October 2014 clearance application (GE 1), and discussed them during a January 2015 interview with a Government investigator (GE 2), based on her November 2016 credit report (GE 3). SOR debt 1.b and SOR debt 1.e appear to be the same debt. Applicant's Answer contained a 22 January 2016 settlement offer from the collection agent to resolve the account at an 80% discount, or \$856. Applicant lacked the funds to take advantage of the offer, which had further been improved to \$328 (Tr. 35-36).⁵ AE B claimed that Applicant eventually settled the account for \$323.

Applicant also admitted thirteen delinquent medical debts totaling about \$4,000 (SOR 1.c, 1.g-1.h, and 1.j-1.s), which she claimed in her Answer to be consolidating with a debt consolidation company. She stated that she made two payments on the plan, but was unable to keep them up (Tr. 29). AE B, a partial unidentified, undated credit report⁶ listing 22 May 2017 updates shows removal of duplicate medical entries for SOR debts 1.o and 1.p, SOR debt 1.q, and 1.f (cable bill). It also shows removal of a mobile telephone account and an medical account that appear on Applicant's May 2017

³However, Applicant's April 2004 sworn statement (GE 5), discusses various security concerns, including numerous delinquent debts that are not alleged in the SOR. At a minimum, they would have aged off her credit reports between April 2003 and her October 2014 clearance Application (GE 1). Whatever security concerns were raised in 2004 were not adjudicated at hearing (Tr. 44-45).

⁴SOR debt 1.d is for a vacuum cleaner Applicant bought which the vendor was contractually obligated to repair when it stopped working within three weeks. SOR debt 1.f involves cable service that Applicant terminated when the vendor failed to provide the offered cable channels.

⁵Applicant was awaiting her income tax refunds to resolve several of the SOR debts.

⁶Applicant's cover email states that the partial document comes from an online credit monitoring site that offers free access to two of the three major credit reporting companies. Neither the document nor Applicant identifies which company the partial report comes from.

credit report (GE 7)⁷, but which were not alleged in the SOR. The medical account is for an amount that apparently does not correspond to any of the SOR debts. Applicant has provided no information which would connect that unalleged debt to any of the SOR debts.

In her March 2016 Answer, Applicant stated that she would be filing her delinquent 2012-2013 income tax returns within two weeks. However, she had stated during her January 2015 interview with a Government investigator that she had all the documentation to file those tax returns. Nevertheless, she had not filed the tax returns until December 2016 (Tr. 38). Moreover, the 2012-2016 state and Federal income tax returns Applicant submitted as AE A are not signed, and contain no indications that any of them were ever filed. Finally, there is no evidence regarding Applicant's tax liability for 2012-2013 (or any subsequent years) or any repayment plans she may have in place.

Applicant attributed her financial problems to losing her job in February 2011 as well as her generally low pay in the positions she has held. She acknowledged living paycheck to paycheck (Tr. 21). When she lost her job, she missed a rent payment. The landlord sued for possession of the home, and even though Applicant later came up with the rent payment, the landlord proceeded with the eviction. From July-October 2011, Applicant was essentially homeless, living in hotels. From November 2011 to April 2012, she rented space in a couple of basements. From May-August 2012, she was back and forth between a hotel and a friend's house. From September 2012 to July 2013, she rented a room in a couple of different homes, until she found her current residence in August 2013. This nomadic existence contributed to her failure to file her tax returns in 2012 and 2013.

Applicant reported her tax problems, mortgage and related loan issues, some delinquent debts, and some efforts to obtain resolution of her debts on her October 2014 clearance application. However, she did not provide any evidence of any 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

⁷GE 7 also shows a delinquent medical account that does not appear in the SOR, as well as SOR debts 1.e-1.g and 1.j

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

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant weathered financial problems when she first obtained a clearance in 2004. She fell into a financial whole when she lost her job in February 2011, and although she obtained a new job fairly quickly, the cascade financial failure followed. Her housing situation was unstable until August 2013. Nevertheless, her efforts to resolve her financial problems show no significant progress on the problems.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 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 she was unable to continue with the consolidation plan or show that her tax returns were actually filed means that the debt has not been mitigated, nor have the tax issues been resolved.¹¹ Her AE A does not

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

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;

document when her tax returns were filed or what her current tax situation is (SOR 1.a).¹²

She did not document how she may have benefitted from the debt- consolidation firm she retained, and in any event was unable to keep up the payments. She provided no evidence of credit or financial counseling, or a budget to address her current debt plans, so I cannot conclude that the SOR debts have been, or are being, resolved.¹³ Moreover, no track record of payments means no 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, there is no "whole person" evidence to support a "whole-person" analysis arguing for granting her clearance notwithstanding her financial issues. I conclude Guideline F against Applicant.

Formal Findings

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|---------------------------|-------------------|
| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraphs a, c-s: | Against Applicant |
| Subparagraph b: | For 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

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.

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.

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