



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-08273
)
Applicant for Security Clearance)

Appearances

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

10/02/2018

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 15 June 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 hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 4

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibits (AE) A-E.

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 10 May 2017. DOHA received the transcript 17 May 2017, and the record closed

Findings of Fact

Applicant admitted the SOR financial allegations. He is a 59-year-old flight test technician employed by a U.S. defense contractor since October 2013. He worked in a similar position with a different contractor from January-October 2013.³ He was unemployed or underemployed from May 2012 to January 2013.

Applicant served honorably in the United States military from November 1977 to December 1997, when he retired. He held a clearance without incident while in the military. His clearance history is otherwise unclear. After retiring from the military in December 1997, he went to work for a Government contractor as a helicopter mechanic in June 2001, and was satisfactorily employed there until June 2011. His clearance status there is undocumented. In June 2011, he changed employers to continue to work on the same helicopter, but at a facility that required him to have an upgraded clearance. When it took too long to secure the clearance approval, his employer laid him off in May 2012. From May-November 2012 he was underemployed as a landscaper for his own company. From November 2012 to January 2013, he was unemployed, actively looking for full-time employment. Consequently, his March 2015 clearance Application (GE 1) must be for a new clearance.

The SOR alleges, Government exhibits (Items 1-5) substantiate, and Applicant admits two delinquent debts totaling just over \$11,000. Applicant was unaware of the SOR 1.a medical debt at the time of his April 2015 subject interview with a Government investigator (GE 2), but stated he would investigate and pay the debt. He claims to have paid the debt, but provided no corroboration.⁴

Applicant disclosed SOR debt 1.b on his March 2015 clearance application (GE 1).⁵ He stated that he had obtained a mortgage modification and had been making

³As is regularly the case with Government contractors, Applicant went from working for a subcontractor to working directly for the prime contractor

⁴The \$25 debt appears to have fallen delinquent in December 2010 (GE 3). It does not appear on Applicant's April 2016 or May 2017 credit reports (GE 4, 5), both of which are by a different vendor than reported the debt on GE 3. In any event, a \$25 delinquent debt is *de minimus* in terms of security significance.

⁵He disclosed \$78,000 delinquent mortgage debt, and provided excruciating detail of the circumstances of hurricane damage in August 2011 and subsequent misadventures with his insurance company, as well as trying to get a mortgage modification.

payments since about October 2014.⁶ He managed to make the required payments between October 2014 and May 2015 (Tr. 46).

Applicant's tale of woe begins in August 2011, when his home was damaged in a hurricane. From early on, Applicant was in contention with his insurance company about the amount it would pay for repairs. The repair estimates Applicant obtained were far higher than the company was offering. Moreover, the company was slow with housing payments for Applicant's dislocation, and would not advance any repair payments until a given portion of repairs was completed and inspected.

As stated above, Applicant was laid off from his job (the job that allowed him to afford his home), in May 2012, when he was unable to obtain the required clearance. His landscaping job was insufficient to pay his mortgage, or advance repair funds on his home. In addition, Applicant's home was damaged again in another hurricane in October 2012, resulting in the same owner-contractor-insurance conundrum, further complicated by Applicant's unemployment and now-delinquent mortgage. Finally, in August 2015, Applicant's home was damaged in a fire. Now, the mortgage servicer's service and insurance departments were added to the discussions. Applicant continued to work with the various parties.⁷ However, they were not able to come to an agreement over repairs to the home. The various bids vary greatly. The wrangling continued from June-November 2016. In about November 2016, Applicant learned from his attorney that he could file a grievance with the state insurance commission. At that point, the servicing department started pre-foreclosure proceedings; the insurance department had always been in favor of restoring the home, but the two departments did not communicate frequently.

As of the date of the hearing, Applicant estimated that he was about \$38,000 past due on his mortgage. He had retained counsel to file a Chapter 13 reorganization plan (AE A), and had undergone the required credit counseling (AE B). He paid one bill that became delinquent after the SOR was issued (AE D), but his other expenses are current.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and

⁶Applicant's March 2015 credit report (GE 3) appears to confirm that fact, as the \$78,000 past-due balance reported by Applicant had been reduced to \$65,262. Moreover, the credit entry stated that Applicant was paying under a partial or modified payment plan. Applicant's April 2016 credit report (GE 4) shows an \$11,358 past-due balance (the amount alleged in the SOR), while noting that the last payment was August 2015. His May 2017 credit report (GE 5) shows the past-due balance grown to \$33,588. However, the credit report noted Applicant's dispute of the account information.

⁷I forbore from having Applicant produce his voluminous communications with the parties (Tr. 56-57). Applicant's Answer contained enough conflicting repair estimates and insurance estimates to illustrate the problem.

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

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant experienced a series of financial pressures beginning in August 2011; hurricane damage to his home in August 2011; underemployment beginning in May 2012; more hurricane damage in October 2012; complete unemployment beginning in November 2012; and fire damage to his home in August 2015.⁹

Applicant meets most of the mitigating conditions for financial considerations. While his financial difficulties are both recent and multiple, the circumstances which led to his financial situation are unlikely to recur.¹⁰ They were certainly due to circumstances beyond his control, and he dealt with them responsibly, having obtained a mortgage

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

⁹¶19(a) inability to satisfy debts; (b) 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 . . .

modification and substantially reduced his part-due mortgage, until squabbling between the various home repair parties caused him to miss additional payments¹¹

On the advice of counsel, Applicant resolved to undertake a Chapter 13 wage-earner reorganization, and took the required credit counseling. The automatic stay of any foreclosure action will give Applicant the time necessary to sort his home repair issues.¹² Applicant was working with his mortgage servicer well before the SOR was issued, and although the home-repair parties have not yet agreed on a plan for repairing his home, his ongoing efforts constitute a good-faith effort to address this aspect of his finances.¹³ Moreover, his filing for Chapter 13 bankruptcy protection is a sensible plan for reorganization the financial pressures that are not completely resolved.

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.¹⁴ Applicant has taken sensible action to resolve his financial pressures before the SOR was issued, and has adapted that plan as circumstances require.¹⁵ Applicant's actions constitute such a plan and execution as contemplated by the Appeal Board. I conclude Guideline F for Applicant.

Formal Findings

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|---------------------------|---------------|
| Paragraph 1. Guideline F: | FOR APPLICANT |
| Subparagraphs a-b: | For Applicant |

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(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;

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

¹⁴ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

¹⁵Which early credit reports showed to have been delinquent but now current and which later credit reports showed to have been paid. None of the education loans was alleged in the SOR, but Applicant's actions to resolve them are relevant to this decision.

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