



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 16-02957
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

11/28/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 7 November 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 23 March 2017, when Applicant's response to the FORM was due. Applicant provided no additional information. DOHA assigned the case to me 1 October 2017.

¹Consisting of the File of Relevant Material (FORM), Items 1-7.

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.

Findings of Fact

Applicant denied the SOR financial allegations, except for SOR 1.c, 1.e, and 1.g-1.h. He is a 45-year-old driver employed by a U.S. defense contractor since October 2004. He has not previously held an industrial clearance.

The SOR alleges, and Government exhibits (Items 5-7) substantiate, eight delinquent debts totaling over \$28,000.³ Applicant admits four delinquent debts totaling nearly \$25,000. The largest debt is a \$14,500 delinquent mortgage (SOR 1.h). He also admits nearly \$11,000 in a delinquent automobile loan (SOR 1c and 1.g).⁴ Applicant claimed, without corroboration, that he had obtained a loan modification to resolve his delinquent mortgage. He had taken no action on his automobile loan or on his furniture account (SOR 1.e).

Applicant's Answer claims, but provides no documentation, that SOR debts 1.a, 1.b, and possibly 1.d are related to SOR debt 1.e, a furniture account which Applicant's credit reports show were sold to other lenders. He seems to think that because he did not contract directly with those lenders, he does not have to pay them, even though he admits that he did not pay the original furniture vendor.

Applicant reported no financial problems on his October 2015 clearance application (Item 4). He was confronted with the SOR debts during a January 2016 interview with a Government investigator (Item 5), based on his November 2011 credit report (Item 6). He claimed to be unaware of SOR debts 1.a-1.b and 1.e-1.f, but stated that he would further investigate these debts and take steps to resolve them, as well as the debts he acknowledged. He claimed, again without corroboration, to have retained the services of a debt repair company in 2013.

Applicant attributed his financial problems to the damages his home received during a 2008 hurricane and the aftermath of that storm. However, he provided no documentation of his chronicle. Supposedly, his insurance company hired a storm damage remediation company to repair his home damage. The company stored his household goods improperly, and they were damaged. Litigation between the insurance company and the restoration company was not resolved until 2012, although Applicant does not state with what result. At the same time, Applicant states that he had purchased insurance from a furniture vendor, but the vendor would not pay for his damaged furniture. More recently, he claims a May 2016 eye injury cost him work hours, and thus income, but he provides no information to support the claim or explain what workers' compensation, if any, was available to him.

³The SOR did not allege balances for SOR debts 1.d-1.f.

⁴Applicant claimed that this loan was obtained by fraud. His January 2017 Answer included a notarized letter from his now-ex-wife, stating that she had forged Applicant's signature on the loan papers, a claim which is belied by Applicant's statement to a Government investigator in August 2015 (Item 4) that he co-signed the loan for her. That statement is consistent with the fact that he was married in July 2010 and the loan was obtained in March 2011, less than a year later, and long before their divorce in August 2014.

Applicant provided no current budget or financial statement. He has not documented 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(d). 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.⁵

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant has a history of financial difficulties, which are ongoing.⁶ The debts he admits are enough to raise security concerns, and he has documented no action to resolve them.

Applicant meets none of the mitigating conditions for financial considerations. His financial difficulties are both recent and multiple, and his financial situation cannot

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶¶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;

be considered unlikely to recur.⁷ Applicant's financial problems may initially be due largely to circumstances beyond his control, but the hurricane was in 2008, and the insurance litigation was resolved in 2012. Yet, he has documented no action to address his debts, even after his January 2016 interview; he has not demonstrated that he has taken responsible measures to deal with his delinquent debts.⁸

Applicant submitted no evidence to show that he received credit or financial counseling, and he has not established that these debts are being resolved.⁹ He has not established that he has made a good-faith effort to address his debts.¹⁰ Moreover, he provided no "whole person" evidence upon which I might base a favorable result. Accordingly, I resolve Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-h: 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

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

⁸¶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;

⁹¶20(c) the individual has received or is receiving counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

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