



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



In the matter of:)	
)	
XXXXXXXX, Xxx Xxx)	ISCR Case No. 14-03283
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro Se*

05/22/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 8 August 2014, the Department of Defense (DoD) issued an SOR to Applicant 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 30 October 2014, and I convened a hearing 3 December 2014. DOHA received the transcript (Tr.) 11 December 2014.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-G.

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 allegations. He is a 44-year-old information technology (IT) portfolio manager employed as a defense contractor since April 2014. He was unemployed from December 2013 to April 2014. Before his unemployment, he was similarly employed with three other companies since November 2005, each time in progressively more responsible positions. He has been continuously employed since at least November 2000. Applicant is a highly-decorated veteran of two branches of the U.S. military, having served honorably in paygrades up to E-7. The record does not reflect whether he is entitled to retirement pay for his military service. Applicant seeks to retain the clearance he has held, as needed, since entering the military in January 1991.

The SOR alleges, Government exhibits (GE 1-4) establish, and Applicant admits six delinquent collection accounts totaling over \$50,000. Nearly \$33,000 of the debt is for two delinquent, Federally-guaranteed education loans (SOR 1.b and 1.c). Applicant incurred these loans for a degree program he completed in 2004. He acknowledged (Tr. 84-87) that between 2007 and 2013, his failure to stay current on his loan payments was largely due to his financial irresponsibility. During that period, his annual salary went from \$85,000 in 2007 to \$110,000 in December 2013, when he lost his job. In September 2014, Applicant entered into a rehabilitation program for these loans whereby he pays \$5 monthly for nine of the next 10 months, at which point the loan is sold to a regular lender and the regular monthly payment increases to accurately reflect the correct amortization schedule (AE C). Applicant's first payment was due in September 2014 and the rehabilitation program was required to be completed by June 2015. The monthly rehabilitation payment is normally made comparatively low to insure that the borrower can successfully complete the rehabilitation of his loans. In Applicant's case, the payment was lower still because the relevant period for calculating what the payment should be included Applicant's December 2013-April 2014 unemployment (Tr. 58-64; 85-87). Applicant's current reported balance on these loans is nearly \$45,000 (AE A).

Another \$7,500 of Applicant's delinquent debt is for two state income tax liens filed in May 2010 and September 2011 (SOR 1.a and 1.f). These liens were for unpaid state income taxes for 2008, 2009, and 2010. In October 2013, Applicant engaged the services of tax consultants (Answer). However, they appear to have provided little assistance to date. In September 2013, Applicant's outstanding state income tax balance was \$8,385 (Answer), for tax years 2008, 2008, and 2010. Applicant got the state to release the state tax liens in SOR 1.a and 1.f by making a lump-sum payment of \$840. His delinquent tax balance was further reduced by the seizure of his 2013 state refund of \$2,518 (Answer), and his 2014 state refund of \$2,524 (AE F), leaving a remaining balance of \$2,500. A payment plan to resolve this remaining balance is pending property settlement negotiations for his divorce (Tr. 55).

Although not alleged in the SOR, Applicant also has a significant debt to the Internal Revenue Service (IRS) for tax years 2010-2013, for which he is on a repayment

plan of \$300 monthly (AE A). Applicant failed to have adequate withholding on his wages, and did not adjust his withholding because of unresolved issues with his wife over their tax liabilities (Tr. 87-89).

The two remaining debts are consumer credit accounts totaling \$10,000 (SOR 1.d and 1.e). In October 2013, Applicant engaged the services of a credit counseling service to resolve these two debts (Answer). Applicant's evidence reflects that he has been making regular payments on SOR debt 1.d through this company since October 2013, reducing the delinquent balance from \$1,926 to \$1,398 (AE D). Applicant instructed the company to pay the remaining balance the day after the hearing (AE E). He was able to make the lump-sum payment because of a year-end bonus he received from his company (Tr. 67). Applicant attempted to resolve SOR debt 1.e through his credit counseling company as well, but the putative successor-in-interest returned the payment because it was unable to identify the original creditor (Tr. 65-66; AE D). This debt no longer appears on Applicant's credit report (GE 4).

Applicant married in April 1993. He and his wife have four children, ages 21, 20, 19, and 14. Applicant separated from his wife in October 2013, although they had been experiencing marital problems since 2011 (Tr. 74-76). When Applicant became unemployed in December 2013, he asked his wife for help with the tax and consumer debts, but she refused (Tr. 50). Allocation of the remaining state tax liability is one of the issues pending in their property settlement negotiations.

Applicant provided no work or character references. The credit counseling company Applicant has been using does not appear to include credit or financial counseling. Applicant's personal financial statement (PFS)(AE A) shows a negative monthly cash flow, but Applicant's annual salary has recently increased from \$110,000 per year to \$122,000-134,000 per year (Tr. 49; AE G).

Policies

The adjudicative guidelines (AG) list factors to evaluate 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 show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. 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, disputed 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels deciding 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 did not mitigate the security concerns. Between at least October 2007 and December 2013, Applicant failed to keep up with his financial obligations to stay current on his educational loan payments, despite possessing the apparent means to do so.⁴ During this same period of time, Applicant and his wife failed to pay state taxes, penalties, and interest for tax years 2008-2010, resulting in tax liens filed in May 2010 and September 2011. These tax years predate Applicant’s stated start date for his marital problems, and he has not adequately explained why he did not change his income tax withholding to match his salary increases or otherwise attempt to resolve his tax issued with the state.

The mitigating factors for financial considerations provide little help to Applicant. His financial difficulties are recent and not infrequent, and the stated cause cannot be considered unlikely to recur because Applicant and his wife have still not reached a settlement agreement on their pending divorce.⁵ Applicant’s separation from his wife can still be considered a circumstance beyond his control, as can his brief unemployment. However, I consider the unemployment a temporary delay in his ability to address his debts. Nevertheless, Applicant has only shown that he was responsible in dealing with his tax and consumer debts. In reaching this conclusion, I have considered that the divorce settlement negotiations have hampered Applicant’s efforts to resolve the state tax debts, despite the fact that the tax debts themselves were not due his failing marriage, but to his failure to address his withholding during years he and his wife were together. Moreover, I have considered the fact that Applicant had been taking meaningful action to address the tax and consumer debts before the SOR was issued.⁶

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 . . . ;

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;

In addition, the payments he made, or attempted, on the consumer debts can be considered good-faith payments. I have given Applicant credit for the progress he has made on his state tax debt, even though the bulk of that progress is through seizure of his 2013 and 2014 state tax refunds. Further resolution of that debt is tied up in the divorce settlement negotiations.⁷

The same considerations do not apply to Applicant's actions regarding his delinquent educational loans, which now stand at almost \$45,000. By his own acknowledgment, these accounts were delinquent before he separated from his wife and experienced his short period of unemployment. Further, he took no action regarding these debts until after he received the SOR, and the current rehabilitation status of the accounts—with only a \$5 monthly payment until June 2015, and no indication what the new payment amount will be after June 2015—does not inspire confidence that Applicant can and will stay current on his educational loans once the monthly payment increases.

Finally, beyond the credit counseling company's assistance in addressing his delinquent consumer accounts, there is no indication that Applicant has received credit or financial counseling as part of those services. Consequently, it is not clear, at least regarding the education loans, that the problem is being resolved.⁸

The concern with Applicant is that while he may credibly state his intent to avoid financial problems in the future, and he may have the means overall to do so, he does not actually have any track record of doing so after he and his wife separated. Further, Applicant has provided no character and employment evidence upon which I could reasonably support a "whole person" analysis in favor of granting his clearance. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a:	For Applicant
Subparagraphs b-c:	Against Applicant
Subparagraphs d-f:	For Applicant

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

⁸¶ 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;

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