



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



In the matter of:)	
)	
XXXXXXXXXX, Xxxx Xxxxxx)	ISCR Case No. 14-03688
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Gregory F. Greiner, Esquire

06/04/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 26 September 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 27 March 2015, and I convened a hearing 20 May 2015. DOHA received the transcript (Tr.) 28 May 2015.

¹The record consists of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-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 the SOR allegations, except for SOR 1.o. He is a 34-year-old senior systems engineer employed as a defense contractor since November 2005. Applicant seeks to retain the clearance he was granted at that time.

The SOR alleges and Government exhibits (GE 1-3) establish 16 delinquent debts totaling over \$44,000. Applicant admits all the debts except for a \$34 medical bill, which he denies because he does not believe that he had any medical expenses during the time alleged by the debt. Applicant claims to have paid the \$78 insurance bill (SOR 1.n) in 2010, and asserts that the company has no record this debt. He paid the January 2005 judgment (SOR 1.p) in July 2012 (AE C).

The remaining 13 delinquent debts are for Federally-guaranteed student loans incurred by Applicant. Applicant attended a regular university from August 1999 to May 2004, but left school without obtaining a degree. The financial records do not indicate if Applicant incurred any student loan debt during this time. Applicant then attended a technical college from July 2004 to December 2006, again without obtaining a degree. Applicant funded this education through Federal loans, the delinquency of which is at issue in this case. Applicant also attended a third school from January 2007 to December 2007, again without obtaining a degree. Applicant appears to have funded this education with loans, none of which are delinquent.

According to Applicant's April 2014 credit report (GE 3), Applicant originally borrowed about \$16,000 from Wells Fargo Education Financial Services beginning in September 2004. He received two loan disbursements in September 2004, two in June 2005, one in October 2005, and one in June 2006. The six disbursements each had a different account number. Wells Fargo reported the six accounts in a satisfactory payment status to TransUnion and Experian—two of the major credit reporting agencies—when the accounts were transferred to another lender. Because the accounts were reported in good standing, and were transferred to another lender, the only financial information reported in these entries is the original loan amount (high credit).

Because Applicant remained in school through the end of 2007, he was eligible for a series of deferments on repayment of his education loans. Once he finished school, he would have been entitled to a grace period before beginning repayment of his loans. By Applicant's admission, he did not begin repayment on the loans (Tr. 37-38).

In November 2008, Educational Credit Management Corporation (ECMC)—the Government's clearing house agent for delinquent student loans—reported acquiring 11 delinquent student loans for Applicant (GE 3). Five loans were specifically referenced as being Wells Fargo loans, but with different account numbers than used by Wells Fargo when it issued the loans. The five loans had an identical account number, coupled with distinct suffixes. The listed suffixes ran from -51 to -56, apparently omitting account -55.

ECMC reported these five accounts to Equifax—the third major credit reporting agency—as 120 days or greater past due as of February 2011. These five delinquent accounts are alleged at SOR 1.a, 1.b, 1.d, 1.j, and 1.l.

Simultaneously with acquiring the Wells Fargo accounts, ECMC reported acquiring six other education debts in November 2008, each with an ECMC-assigned account number, beginning with a base number and suffixes -01 to -06. ECMC reported these six accounts to TransUnion, Experian, and Equifax in collection as of April 2014. These six delinquent accounts are alleged at SOR 1.c, 1.e, 1.f, 1.h, 1.k, and 1.m. Although ECMC did not specifically relate these six accounts to the Wells Fargo accounts, an April 2015 ECMC letter to Applicant (AE F) references disbursements -01 to -06 as reported by ECMC on Applicant's April 2014 credit report, but reports disbursement dates that correspond precisely with the origination dates initially reported by Wells Fargo in the same credit report.³ The April 2015 ECMC letter reports to Applicant that his six delinquent loans were rehabilitated, repurchased by SLM (Student Loan Marketing) Trusts and assigned to Navient Solutions—the Government's clearing house agent for student loans in good standing—on 30 June 2014. In April 2015 Wells Fargo confirmed to Applicant that they were not servicing any loans for Applicant (AE G).

Based on my assessment of the credit reports and Applicant's exhibits, I conclude that SOR debts 1.a, 1.b, 1.d, 1.j, and 1.l. duplicate of five of the six SOR debts 1.c, 1.e, 1.f, 1.h, 1.k, and 1.m. As SOR debts 1.c, 1.e, 1.f, 1.h, 1.k, and 1.m present a clearer picture of Applicant's delinquent loans, I resolve SOR debts 1.a, 1.b, 1.d, 1.j, and 1.l. for Applicant.

In addition to his Federally-guaranteed loans, Applicant also took out education loans directly with the Government (SOR 1.g and 1.i) that later fell delinquent. Applicant paid these loans in April 2015 (AE E), with money he borrowed from his parents, who expect to be repaid (Tr. 39, 44).

Applicant states that when his loans came due in 2008, he was not making enough money to begin repayment on them, and did not want to tell his lenders that he could not pay. However, he acknowledges receiving dunning notices from Wells Fargo and ECMC with instructions about how to contact them and make payment arrangements on his defaulted loans (Tr. 45-46). He claims, without corroboration, to have had a repayment plan on one of his loans in 2011 that he was unable to keep up on. It was not until November 2014, that he got the ECMC loans placed into

³The five ECMC-Wells Fargo entries repeat on Applicant's March 2015 credit report (GE 2), which contains only entries reported by Equifax. However, the ECMC entries for its ECMC-assigned account numbers have been deleted. Appearing for the first time are six Navient entries, each with a new account number and suffixes -012 to -062. Although the balances for each account differ from both the ECMC-Wells Fargo and ECMC-Only accounts alleged in the SOR, the high credit amounts for each account exactly match the original high credit amounts initially reported by Wells Fargo in 2006. Similarly, Applicant's May 2015 TransUnion credit report (AE A) and his May 2015 Equifax report (AE B) report high credit amounts that exactly match the amounts originally reported by Wells Fargo.

forbearance with Navient (Tr. 40), and it was not until 2015 that he borrowed money to pay the direct student loans.

Applicant provided no work or character references. Applicant currently makes \$90,000 annually. Since going to work for his employer in November 2005, he has received regular promotions and pay raises. Applicant and his wife currently net about \$8,200 monthly, and have a \$3,500 monthly budget. He does not know what the monthly payment on his educational loans will be when the forbearance ends in August 2015.

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.⁴

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 November 2014, 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.⁵

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

Even accepting Applicant's claim that he could not make the required loan payments in 2008 when loan repayment was scheduled to begin, he made no effort to contact his lenders at that time. When he began to make more money, he did not contact his lenders. He took no action to address his delinquent loans until after he received the SOR.

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 took no steps to remain in contact with his lenders.⁶ Applicant's claimed inability to pay in 2007 cannot be considered a circumstance beyond his control when he had been employed by his current employer since November 2005 and made no effort to explain his financial situation to his lenders when the loans first became due or as his financial situation improved over the years. This is not responsible action in dealing with his delinquent debts.⁷

In addition, the payments he made on his direct loans and the reestablishment of contact with ECMC and Navient do not constitute a good-faith effort to pay his creditors, coming as they did well after he received the SOR.⁸

Finally, there is no indication that Applicant has received credit or financial counseling. His loan payment has yet to be established, and obviously there is no track record of repayment. Consequently, it is not clear regarding the education loans, that the problem is being resolved.⁹

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. 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.

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

⁷¶ 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;

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

⁹¶ 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;

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b, d, j, and l:	For Applicant (duplicates)
Subparagraphs c, e-i, k, and m:	Against Applicant
Subparagraphs n-p:	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