



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



In the matter of:)	
)	
XXXXXX, Xxxxx XXXXXXX)	ISCR Case No. 14-05965
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: James R. Klimaski, Esquire

07/23/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s clearance is granted.

On 24 January 2015, 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 13 April 2015 and I convened a hearing 27 May 2015. DOHA received the transcript 4 June 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, Hearing exhibit (HE I), and Applicant exhibits (AE) A-K. AE K was timely received post hearing. The record in this case closed 5 June 2015, the day Department Counsel indicated no objection to Applicant’s post-hearing exhibits.

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 financial allegations. She is a 41 year-old senior systems engineer employed by a defense contractor since December 2013. She was previously employed with another defense contractor from July 1997 to January 2013. She was unemployed January-December 2013. She seeks to retain the clearance she has held since April 2002.

The SOR alleges, Government exhibits (GE 2-3) substantiate, and Applicant admits, eight delinquent accounts totaling nearly \$55,000. Applicant also admits failing to file her state and Federal income tax returns for 2011-2013. She reported these financial issues on her April 2014 clearance application.

Applicant filed her missing state and Federal income tax returns in March 2015 (AE A). She had been working with the Internal Revenue Service (IRS) for several years, recreating records that had been destroyed by her previous employer as well as obtaining necessary documents from her ex-husband. Her Federal returns show refunds totaling nearly \$20,000, although that amount may be reduced by any late-filing fees imposed. Under the terms of the marital settlement between Applicant and her ex-husband (AE K), any refunds on their joint returns for 2011 and 2012 were to be applied to five specified debts.³

Applicant paid SOR debts 1.b-1.g in May 2015 (AE E, K) with funds from an early withdrawal from her retirement account (AE F). She had state and Federal taxes withheld from the amount disbursed to her (AE F; Tr. 64-67). She had received settlement offers from the creditors for SOR debt 1.c (AE B) and 1.d (AE C) for substantial discounts, but preferred to repay the entire amount owed (Tr. 97-98).

In April 2015, Applicant entered into a trial period plan agreement (AE D) with her lender (SOR 1.h) to begin the process of rehabilitating her delinquent mortgage. When Applicant lost her job in January 2013, she contacted her mortgage lender, but the lender would not accept partial payments, so she stopped paying the mortgage in March 2013 (Tr. 61). Applicant requested mortgage assistance in September 2013, and began the process with her lender. However, the lender kept failing to meet its self-imposed processing time limits and required her to restart the process several times (Tr. 62-63). Almost two years passed before the lender was ready to enter into the agreement. She made her first required payment in early May 2015 (AE K). She has already scheduled the second and third payments. Applicant claimed to have paid SOR debt 1.i for \$315 (Answer; Tr. 94), but did not provide any documentation.

The roots of Applicant's financial problems trace back to her 2009 pregnancy. About halfway through the pregnancy, around July 2009, Applicant's husband began drinking heavily (Tr. 53). He also began spending on unnecessary items. Their daughter was born in early December 2009.

³Corresponding to SOR debts 1.b-1.e and 1.g.

In spring 2010, Applicant's husband's lost his employment. Applicant thought he had been laid off, but it later developed that he had essentially been terminated for cause; he had sabotaged his employment. He became moody and depressed, and continued drinking heavily. He became withdrawn and refused to look for new work. In addition to his increasing alcoholism, he continued spending on unnecessary items. He became sufficiently unreliable that Applicant could not leave him to supervisor their daughter. Consequently, in addition to being the sole wage earner in the family, Applicant had to pay for child care to keep their daughter safe. In about June 2010, Applicant's husband moved into the basement of their house and essentially became a hermit, leaving only to buy more alcohol or engage in contentious discussions with Applicant. He refused all efforts to engage in marital counseling or personal counseling for himself. Applicant and her husband essentially separated in October 2010 (AE K).

Around May 2011, Applicant decided that she and her husband would have to divorce. However, in August or September 2011, she became ill with a chronic condition that required surgery to ameliorate in December 2011. She was away from work with disability payments, which decreased her income, for four-to-six months altogether (until February 2012). The condition she suffers from is not curable, but her health has been much better since her surgery.

Although Applicant pursued the divorce, her husband refused to discuss a marital settlement agreement for over a year (Tr. 57). He also refused to leave the marital home. Not until Applicant sought a court order to forcibly remove him from the marital home did he agree to move out. He moved out of the marital home in October 2012 (Tr. 79-82).

Applicant was laid off from her job of nearly 15 years in January 2013. She was given a generous severance package and qualified for unemployment (Tr. 76). In addition, she made ends meet by borrowing from each of her parents, now divorced themselves, and each retired. Once she was re-employed, she began repaying them—even though her mother, in particular, had not expected to be repaid (Tr. 93-96). She does not owe either parent any more money. She also paid other delinquent debts, such as utility bills, that were not alleged in the SOR.

Applicant's layoff occurred just as she was preparing for her divorce trial. She and her husband eventually entered into a marital settlement agreement (MSA) in February 2013 (AE K) . In exchange for primary physical custody of their child and sole ownership of the house, Applicant assumed all the marital debt, which specifically included all the SOR consumer debt except the \$315 at SOR 1.i. Notably, the physical custody arrangements specifically reference the husband's history of alcoholism, depression, and anxiety.⁴ With the MSA in place, their divorce was final in March 2013 (AE G). Applicant's ex-husband was obligated under the terms of the divorce to pay

⁴The custody agreement established stringent compliance requirements for the husband, and authorized Applicant to ensure his compliance through routine monitoring and consultation with his physicians until February 2015.

\$700 monthly child support plus his daughter's pre-school tuition of \$1,600 monthly. However, he has remained unemployed since the divorce and thus is \$17,000 in arrears with his child support payments and an undetermined amount for unpaid tuition, which Applicant has paid to the school (Tr. 96).

Applicant's coworker and friend from 1997 to her layoff in January 2013, noted her excellent work record, and confirmed her layoff. She also confirmed important details of Applicant's separation and divorce, including her personal observation that Applicant tried to compensate for her husband's overspending by bringing items she intended to return into the office (Tr. 24-33). Her neighbor since August 2012, confirmed Applicant's unemployment and mortgage problems. She had gone through a similarly contentious divorce herself and served as Applicant's "accountability partner," helping Applicant with decisions about how best to proceed through a difficult time (Tr. 36-37). Her friend from her daughter's daycare program (and a retirement planner) also helped her with discussions about how to deal with her debts. In December 2014, she discussed with Applicant using some of her company retirement account to pay the debts. She was aware that Applicant eventually used some of her retirement account to pay the debts, but she was surprised that Applicant took out less money than she thought she would need, and put the extra funds into a new retirement account (Tr. 43-50).

Applicant did not otherwise receive financial or credit counseling. She did not present a budget. She has received several raises since becoming re-employed in December 2013, most recently in January 2015. She currently earns \$122,000 annually, substantially more than she earned at her other employer (Tr. 73).

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 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, but Applicant mitigated the security concerns. Between July 2009 and December 2013, Applicant experienced an emotional and financial nightmare. Her husband became an alcoholic spendthrift. He lost his job and became more alcoholic, depressed, and anxious, as well as continuing his profligate spending. Applicant had to deal with her own significant medical issue, a contentious divorce, and her own unemployment. These events caused significant marital debt, mortgage arrears, and unfiled state and Federal income tax returns.⁶

However, once her divorce was resolved and she became re-employed, she began addressing her financial situation. She tried working with her mortgage lender when she first became unemployed, and, when that failed, she began requesting mortgage modification in September 2013, while she was still unemployed. When she became re-employed, she began paying her parents back and dealt with other delinquent debts. She began working with the IRS to address her unfiled tax returns. She disclosed these financial issues on her April 2014 clearance application. In December 2014, she was discussing with her friend (and retirement planner) how to best address the marital debt she had assumed as part of her divorce settlement. All these things occurred before the SOR was issued. That all these things were not resolved until after the SOR was issued is no indication of Applicant’s dereliction.

The mitigating factors for financial considerations give Applicant substantial aid. While her financial difficulties are both recent and multiple, Applicant’s employment is now stable; so the circumstances that caused them are less likely to recur.⁷ Further, her financial problems were largely due to circumstances beyond her control—her husband’s substance dependency, medical issues, and loss of income; a contentious and lengthy divorce; and her own unemployment. I note that she began addressing her financial problems even before she regained stable employment in December 2013.

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

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

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

She has continued to address her other financial issues since then.⁸ While there is no evidence that Applicant has had any financial counseling, she has clearly acted responsibly to get her finances under control.⁹ The only debt not completely documented as paid totals \$315. Applicant has demonstrated the willingness and ability to address her delinquent debts. Having addressed her other financial obligations, I am confident this final obligation will also be addressed, if it has not been already. The missing documentation may merely be an oversight on her part. Overall, substantial progress has been made addressing her financial issues.¹⁰

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.¹¹ Applicant's efforts to date constitute such a plan, and her filing of her income tax returns (with significant refunds due), modification of her mortgage, and payment of the bulk of the marital debt reflect significant actions. Certainly, these actions have been necessary to keep her clearance and thus her job. However, those goals have clearly been motivated by her desire to establish and maintain a safe and stable environment for her daughter. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-i: For Applicant

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

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 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;

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

¹¹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).