



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



In the matter of:)	
)	
)	ISCR Case No. 07-02718
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Thomas G. Coale, Esquire, Department Counsel
For Applicant: *Pro se*

October 2, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 9 April 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.¹ Applicant answered the SOR 4 May 2009, and requested a decision without hearing. DOHA assigned the case to me 3 September 2009. The record in this case closed 10 July 2009, the day Applicant’s response to the government’s File of Relevant Material (FORM) was due. Applicant provided no additional information for evaluation.

Findings of Fact

Applicant admitted the SOR financial allegations. He is a 42-year-old facilities manager employed by a U.S. defense contractor since May 1985. He appears to have

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Revised Adjudicative Guidelines (RAG) effective within DoD on September 1, 2006.

held a clearance, as needed, since August 1993. He has been married since August 1981, and has three children.

The SOR alleges, Applicant admits, and government exhibits substantiate, 13 delinquent debts totaling over \$24,000. The debts consist of state and federal income taxes (SOR 1.a.–c.) and credit card debt (SOR 1.d.–m.). Applicant attributes his financial problems to his wife's 6-8 months unemployment in 2000-2001 and a job relocation in September 2005. However, an underlying cause of his financial problems is the large number of credit cards on which he and his wife maintained balances.

Applicant claims to have repayment plans on his delinquent taxes. However, his documentation shows only one installment payment in August 2008 on his federal income taxes. The Internal Revenue Service (IRS) has also been seizing his income tax refunds for years in which he has them. Documents concerning his state taxes reflect a past due balance for 2004, but also that he has paid his taxes for 2006 (not at issue in this SOR).

Applicant also claims to have consolidated some of his credit card debt with a credit consolidator, and was to begin monthly payments to the consolidator in August 2008. However, he has provided no documentation of which debts were consolidated and which debts he was to repay directly. He has provided no documentation that he has made the agreed payments to the consolidator. He has provided no documentation of any payments to creditors made by him or by the consolidator.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, 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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.²

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties, which are ongoing.³ They were largely caused by Applicant’s irresponsible use of credit, and exacerbated by his wife’s unemployment and his job relocation.

Applicant potentially meets only one of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁴ While his wife’s unemployment was clearly a circumstance beyond his control, the seeds of his financial problems had already been sown. Moreover, the unemployment was in 2000-2001 and the job relocation in 2005. Applicant has not acted responsibly in addressing his debts since then, having not even addressed the debts under \$1,000.⁵ Also, there is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁶ There is very little evidence, and no corroboration, of any good-faith effort to satisfy his debts.⁷ Finally, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

Although I have reviewed the generally applicable “whole person” factors, the record lacks any information upon which to base a favorable analysis.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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

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

⁵¶ 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.

⁶¶ 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.

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

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a-m: Against Applicant

Conclusion

In light of all 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