



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



In the matter of:)	
)	
)	ISCR Case No. 07-07517
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

September 25, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 6 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, E, and J.¹ Applicant answered the SOR 5 June 2008, and requested a decision without hearing. DOHA assigned the case to me 15 September 2008. The record in this case closed 4 September 2008, the day Department Counsel indicated no objection to Applicant’s response to the government’s File of Relevant Material (FORM).

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.g., 1.j., 1.m., 1.n., 1.o., and 1.p. He is a 42-year-old air traffic assistant employed by a defense contractor since April 2003. He seeks to retain the security clearance he appears to have held since May 1989.

Applicant has a history of financial difficulties as far back as 1997, when he and his wife separated, and ultimately divorced. However, he has been continuously employed since at least December 1991, including more than 11 years as a federal employee.

In June 2003, several years after his divorce was final, Applicant was discharged of over \$132,000 in debt in a chapter 7 bankruptcy filing.² Nevertheless, his financial problems continued and became exacerbated over the subsequent years.

In February 2002, the Internal Revenue Service (IRS) filed a \$5,595 tax lien against Applicant for tax years, 1998, 1999, and 2000. This lien could not be discharged in bankruptcy. The record does not indicate whether this tax debt was due to Applicant's failure to file those tax returns in a timely fashion, his failure to withhold sufficient income tax to cover his liability, or a combination of both. However, this tax lien was released in April 2008, largely because the IRS seized his income tax refunds for tax years 2004 and 2005.³ In March 2005, the IRS filed a second tax lien against Applicant for \$7,560 for tax year 2001. Again, the record does not indicate whether this tax debt was due to Applicant's failure to file that tax return in a timely fashion, his failure to withhold sufficient tax to cover his liability, or a combination of both. Nevertheless, the \$7,560 figure represents penalties and interest from an original tax liability of \$7,087. In addition to the tax lien for 2001, record evidence shows that Applicant owes \$1,787 in delinquent taxes for 2002, \$499 for 2003, and at the time of his answer to interrogatories in December 2007, had not filed either his state or federal income tax returns for 2005 and 2006. The federal tax returns for 2005 and 2006 were apparently filed in 2008, because IRS records from April 2008 show that IRS seized Applicant's tax refund for 2005 and applied it to his 1999 tax bill. IRS records also show he owes \$5,227 for delinquent taxes in 2006, bringing his total indebtedness to the IRS to nearly \$15,000. He has documented no repayment plan with the IRS.

²Applicant first filed for chapter 13 bankruptcy protection in November 1997. However, that petition was dismissed in June 1998, without plan confirmation, because Applicant failed to make any of the first three required payments. He re-filed for chapter 13 bankruptcy protection again in October 1999, but the petition was voluntarily dismissed in August 2000. The chapter 7 bankruptcy discharge began as a third chapter 13 bankruptcy in August 2000, but was converted to a chapter 7 bankruptcy in March 2003.

³Although Applicant claimed to be paying on his delinquent taxes through wage garnishment in August and September 2006, I find his documentation less than persuasive, both because he only produced two pay stubs showing the garnishment and because the pay stubs do not indicate what the garnishment was for, and Applicant produced no evidence linking the garnishments to his tax account.

In addition to Applicant's indebtedness to the IRS, the SOR alleges, and government exhibits confirm, delinquent child support of nearly \$21,000⁴, \$9,000 in delinquent state taxes for 2004, a \$1,600 deficiency balance on an automobile repossession in April 2003, and seven delinquent debts totaling just over \$1,100. In his December 2007 interrogatory response, Applicant stated his intent to pay these seven small debts—none of which is larger than \$350.00—while on his upcoming vacation. Yet, none of these debts has been paid.

When Applicant applied for a security clearance in December 2003 (Item 4), he answered "no" to a series of questions [36–39 (tax liens) (unpaid judgments) (financial delinquencies)]. He disclosed a February 2003 chapter 7 bankruptcy for \$35,000, a September 2000 wage garnishment, and an April 2003 mortgage foreclosure. The complete truth was somewhat more complex. He did not disclose the full history of his bankruptcy filings, and his explanation that he considered them all one piece is unreasonable given the timing of filings and dismissals, and the fact that his last chapter 13 bankruptcy petition was not converted to a chapter 7 petition until nearly three years after the original filing.

Applicant provided several work references that indicate the quality of his performance over the years. However, none of these references reveal any knowledge of his financial difficulties.

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 common sense 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 guidelines are Guidelines F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct).

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

⁴Applicant's response to the FORM includes copies of child support payments made from 2004-2007. Unfortunately for Applicant, he is able to produce confirmation of most, but not all the payments he made in 2004, with progressively fewer document payment in the subsequent years. He provided confirmation of only two payments each in 2006 and 2007, and none for 2008.

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.⁵

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Although Applicant was discharged of over \$132,000 in delinquent debt in June 2003, he has been unable to avoid further financial difficulties.⁶ The IRS tax lien that survived the bankruptcy discharge, was only satisfied in April 2008, and only then because the IRS seized tax refunds for 2004 and 2005. The IRS could not have seized tax refunds for earlier years, because there were none. Applicant owes taxes for 2001, 2002, 2003, and 2006, and has a second lien for the 2001 debt. Applicant appears to have made substantial payments on his child support arrearages, but the inadequacy of his records makes it impossible to conclude that he is current and can remain current on his required payments. Finally, Applicant has documented no steps to address the seven small debts alleged in the SOR, or the repossession deficiency.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁷ While his separation and divorce are a clear circumstance beyond his control, that process ended eight years ago, and he has not acted responsibly in addressing his debts since then.⁸ There is no evidence that he

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

⁶¶ 19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; (f) financial problems that are linked to . . . gambling problems. . . ;

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;

has sought credit counseling or otherwise brought the problem under control.⁹ Aside from his child support payments, there is very little evidence of a good-faith effort to satisfy his debts.¹⁰ Further, 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.

The government also established a case for disqualification under Guidelines E and J., and Applicant did not mitigate the security concerns. Although the evidence is mixed, and Applicant disclosed some adverse financial information, I conclude, on balance, that the minimal information disclosed, coupled with the information withheld, demonstrates his efforts to minimize his financial delinquencies to the government.¹¹ He did so knowing that these issues were of security concern to the government.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose his financial difficulties until his subject interview.¹² Applicant's failure to disclose his adverse finances demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. This conduct also violated 18 U.S.C. §1001.¹³ I resolve Guidelines E and J against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant

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.

¹¹¶ 16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

¹²¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

¹³¶ 31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Subparagraph b: Against Applicant
Subparagraph c: Against Applicant
Subparagraph d: Against Applicant
Subparagraph e: Against Applicant
Subparagraph f: Against Applicant
Subparagraph g: Against Applicant
Subparagraph h: Against Applicant
Subparagraph i: Against Applicant
Subparagraph j: Against Applicant
Subparagraph k: Against Applicant
Subparagraph l: Against Applicant
Subparagraph m: Against Applicant
Subparagraph n: Against Applicant
Subparagraph o: Against Applicant
Subparagraph p: Against Applicant
Subparagraph q: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: Against Applicant
Subparagraph c: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph a: 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