



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



In the matter of:)	
)	
)	ISCR Case No. 07-08323
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

March 31, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 28 September 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E.¹ Applicant answered the SOR 29 October 2007, requesting a decision without hearing. However, Department Counsel timely requested a hearing in accordance with the Directive. DOHA assigned the case to me 3 January 2008, and I convened a hearing 14 February 2008. DOHA received the transcript (Tr.) 27 February 2008.

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 a 1999 chapter 7 bankruptcy discharge (SOR 1.a.) and a past due medical bill (SOR 1.g). Accordingly, I incorporate his admissions as findings of fact. He denied the remaining SOR allegations. He is a 51-year-old help desk manager employed by a defense contractor since February 2006. He seeks to retain the security clearance he held on an interim basis until the SOR was issued.

When Applicant applied for a security clearance in September 2006 (G.E. 1), he answered “no” to a series of questions [27.a.–d. (financial record); 28.a.–b. (financial delinquencies)], representing that he did not have any history of financial difficulties. The truth was somewhat more complex. In June 1999 [more than seven years before he completed his clearance application (27.a.)], he filed a chapter seven bankruptcy petition. In September 1999, he was discharged of \$50,000 unsecured debt. Applicant took the literal wording of question 27.a. (“in the last 7 years, have you filed . . .”) in not disclosing his bankruptcy.² Similarly, he had judgments against him for unpaid timeshare fees entered in September 2003 (SOR 1.b.)(paid June 2004) and November 2004 (SOR 1.c.)(paid December 2004), that were not disclosed on his clearance application (SOR 2.a.)(27.d., unpaid judgments, last seven years).³ In addition, Applicant had a voluntary repossession of an automobile that resulted in a deficiency balance that he paid in August 2006—another financial issue he concealed from the government (27.b).⁴ However, Applicant deliberately failed to disclose delinquent debts as required by questions 28.a. (180 days delinquent, last seven years) and 28.b. (currently 90 days delinquent). Applicant told his government investigator that he concealed the delinquent debts because “he did not want them to hinder him getting the job. The security officer that reviewed his security questionnaire was the same person that did the hiring.” (G.E. 8)

The SOR alleges, and government exhibits confirm, six delinquent debts⁵ totaling just over \$4,000. The two judgments against Applicant were paid in 2004. Of the remaining four delinquent debts, one was paid in May 2007 (SOR 1.h.), six months after his interview with the government investigator. Two were paid in October 2007 (SOR 1.e. and 1.f.), after he received the SOR. One remains unresolved (SOR 1.g.). Applicant cites no particular reason for his inability to stay current on his accounts following his bankruptcy discharge—although he was unemployed between July 2005 and February 2006 when the contract he was working on expired. However, between August 2003

²And no falsification was alleged in the SOR for this question. I include the discussion to set the context in which the other falsifications are alleged in the SOR.

³However, because the judgments had been paid, Applicant was not required to disclose them. Accordingly, I find SOR 2.a. for Applicant.

⁴But which was not alleged in the SOR.

⁵Record evidence shows that SOR 1.b. and 1.d. are the same debt. Accordingly, I find 1.d. for Applicant.

and August 2004, he lost \$1,500–2,000 gambling in an effort to get current on his accounts. He does not think that gambling affected his finances, having had money problems before gambling and money problems after gambling (Tr. 62).

Beyond the debts alleged in the SOR, Applicant's credit reports reflect ongoing financial difficulties after his 1999 bankruptcy discharge. He had a home mortgage in foreclosure that was paid when he was able to refinance the home. He had several accounts that were paid after being charged off by the creditor. He also had several delinquent accounts that he settled for less than the full amount of the debt. Still others were paid after being referred for collection.

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) and Guideline E (Personal 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 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.⁶

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Although Applicant has paid all but one small debt (SOR 1.g) alleged in the SOR, the record reflects ongoing financial difficulties since his 1999 bankruptcy discharge.⁷ Applicant's brief unemployment probably contributed to his financial difficulties, but Applicant had financial problems both before and after the unemployment, just as he had financial problems both before and after he lost between \$18,000 and \$24,000 gambling from August 2003 to August 2004. Further, even though most of the debts alleged in the SOR were small, three remained past due after security concerns were raised by the government.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁸ The debts were not due to circumstances beyond his control, and he has not acted responsibly in addressing his debts.⁹ There is no evidence that he has sought credit counseling or otherwise brought the problem under control.¹⁰ Although he may have paid some outstanding debts after the SOR was issued, the timing of the payments does not constitute a good-faith effort to satisfy his debts.¹¹ 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 Guideline E, and Applicant did not mitigate the security concerns. He deliberately concealed his financial delinquencies from the government.¹² He did so knowing that these issues were of security concern to the government, and believing that he might not be hired if he told the truth.

⁷¶ 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. . . ;

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

⁹¶ 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;

¹⁰¶ 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;

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

¹²¶ 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. . . ;

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.¹³ 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. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph a: Against Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant
Subparagraph d: For Applicant
Subparagraph e: Against Applicant
Subparagraph f: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

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

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

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