



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



In the matter of:)	
)	
)	ISCR Case No. 14-03771
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 15 August 2014, the Department of Defense (DoD) issued a Statement of Reasons (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 5 December 2014, and I convened a hearing 22 January 2015. DOHA received the transcript (Tr. I) 30 January 2015. On 25 June 2015, I issued an unfavorable decision,

¹Consisting of the transcript of the hearing on 22 January 2015 (Tr. I), the transcript of the hearing on 6 October 2015 (Tr. II), Government exhibits (GE) 1-4, hearing exhibits (HE) I-III, and Applicant exhibits (AE) A-D. AE A was timely received post-hearing I. AE B-D were received at hearing II.

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.

which Applicant timely appealed. On 2 September 2015, the Appeal Board remanded the case to me for a new hearing, which I conducted on 6 October 2015. DOHA received the second transcript (Tr. II) 14 October 2015.

Findings of Fact

Applicant admitted the SOR allegations. He was a 42-year-old Freedom of Information Act/Privacy Act analyst formerly employed by a defense contractor since May 2013. He seeks renewal of the clearance issued to him in approximately 2002.³ He requires the clearance for access to the building where he works (Tr. I, 48).

The SOR alleges, Government exhibits (GE 2-4) establish, and Applicant admits, four delinquent debts totaling nearly \$19,000. Over \$18,000 of the debt consists of delinquent education loans guaranteed by the Government. The remaining debt is for two delinquent cable accounts. Applicant began making \$84 monthly payments on the education loan at SOR 1.b in September 2014, and has made required payments of \$420 through December 2014 (AE A). He has continued to make the required payments since December 2014 (AE B). The education loan at SOR 1.c was due to come out of forbearance soon (Tr I, 44). Applicant began repaying this loan in April 2015 (AE A), and has made the required payments since.⁴ The cable bills had not been paid (Tr. I, 63), although Applicant had some difficulty locating the proper creditors. However, Applicant appears to have paid SOR debt 1.d in April 2015 (AE B). SOR debt 1.a remains unaddressed.

Applicant attributed his delinquent debts, particularly his education loans, to putting his child support obligations ahead of his education loans (Tr. I, 43), and to periods of unemployment and underemployment he experienced before he obtained his current job. However, he has had no child support obligation since 2012 (Tr. I, 47), and his periods of unemployment/underemployment have not been clearly identified (Tr 49-50).

Applicant provided no evidence of community and civic contributions. His supervisor and another co-worker consider him honest and trustworthy and recommend him for his clearance (AE D). His supervisor is generally aware of his financial

³Applicant's clearance had been erroneously reinstated based on his earlier investigation (HE I-III). Accordingly, Applicant had not thought it necessary to bring any documentation to the hearing regarding the status of his debts (Tr. I, 24-40). Consequently, I left the record open to give Applicant the opportunity to submit AE A (Tr. I, 70-73). The Appeal Board considered these remedial steps insufficiently corrective, and so remanded the case to me for a new hearing at which there would be no doubt about Applicant's clearance status. Because Applicant's clearance had been erroneously reinstated, it was later administratively terminated and Applicant lost the employment that required the clearance (Tr. II, 18).

⁴At the time of Applicant's clearance application in May 2013 (GE 1), this account was current on a balance of \$32,227, although it had previously been more than six months past due (GE 4). However, when the SOR was issued in August 2014, the account was \$1,423 past due on a balance of \$34,438 (GE 3). When Applicant began repayment in April 2015, the balance had grown to \$35,673 (AE A).

problems; his co-worker is not. He has received no credit or financial counseling (Tr. I, 64). He did not submit a budget.

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.⁵

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. The essential facts from the first hearing remain unchanged: Applicant had significant delinquent debts that he only began to address when he received the SOR. The SOR alleged nearly \$19,000 in delinquent debt that Applicant voluntarily incurred and has yet to resolve.⁶ Moreover, the overwhelming majority of the delinquent debt is for Government-backed education loans he incurred to further his education. These two loans total over \$52,000. He has only recently begun to make any progress on these debts, after receiving the SOR.

In addition, Applicant possibly meets only one of the mitigating conditions for financial considerations. His financial difficulties are recent, not infrequent, and

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;

ongoing.⁷ The circumstances that he cites as the cause of his indebtedness have not been demonstrated to be beyond his control, as he has not detailed his unemployment/underemployment and his child care obligation ended in 2012. He cannot be considered to have acted responsibly in addressing his debts under the circumstances, because he took no action to resolve his debts until he received the SOR.⁸ Further, even if I were to conclude that his 12 payments on one education loan and six on the other constituted a good-faith effort to resolve his debts, that effort would be insufficient to overcome the adverse security concerns raised by the disqualifying conditions.⁹

The concern with Applicant is that while he now promises to address his delinquent debts, he has made little progress in that direction. The Government is not the collection agent of last resort. Moreover, as he is now unemployed, it is unclear how he will continue to make the payments he has undertaken over the last year. The Government expects applicants to deal with their delinquent debts because of their legal and moral obligation to do so, not because they face the risk of adverse administrative action. He has not received credit or financial counseling. He certainly has not demonstrated that these delinquent debts can be resolved in an expeditious manner.¹⁰ Further, his favorable character and work references, while encouraging, are insufficient to establish a “whole-person” analysis supporting a favorable clearance action. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant

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;

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

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;

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