



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



In the matter of:)	
)	
)	ISCR Case No. 14-03972
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: Gregory F. Greiner, Esquire

06/25/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 October 2014, 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 10 March 2015 and I convened a hearing 20 May 2015. DOHA received the transcript 28 May 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-M

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, except for SOR 1.k. He is a 53-year-old welder employed by a defense contractor since September 2013. He has not previously held a clearance. His clearance requirement is mostly for building access, although a clearance will also give him access to the unclassified email system, so he can receive shop drawings via email.

The SOR alleges, and Government exhibits (GE 2-3) substantiate, 15 delinquent debts totaling almost \$34,000. Applicant admits 14 debts totaling \$32,000. Applicant also admits failing to file his state and Federal income tax returns for 2011-2012. Applicant was unemployed those years, and he was told by his accountant that he did not have to file if he had no income (Tr. 56). He filed the missing income tax returns in March 2014 (AE I, J), showing no tax liability.

From 1998 to August 2010, Applicant ran his own drive shaft and welding service. He ran the business end of it, and his now-ex wife ran the financial end. Applicant's business dropped off dramatically in the wake of the 2008 economic downturn, and by 2010 he realized that he had to close the business down. At that time, Applicant learned that his wife had not paid sales taxes owed to the state, among other financial neglect of the business accounts. Applicant borrowed \$10,000 from his sister to pay the sales taxes and deposited it in his business account, but his wife did not pay the taxes. Applicant later entered a repayment plan with the state, and was current with his plan as of March 2015. He had reduced the balance (not alleged in the SOR) to \$7,750 (AE H).

Applicant and his wife separated in July 2010. They mediated a property settlement in which he continues to pay the mortgage on their home in lieu of child support and alimony (Tr. 67). Their divorce was final in June 2012. He lives in a \$400 monthly rented room and drives a 2000 vehicle.

When Applicant completed his October 2013 clearance application (GE 1), he asked his sister to help him pull his credit report so he could answer the financial questions. He was stunned by the results. However, he began to address the debts listed on that credit report. On his clearance application he reported delinquent debts that he had since paid as well as many of the outstanding SOR debts. His credit reports show numerous accounts not alleged in the SOR that were previously delinquent but that are now paid or settled. Applicant engaged the services of a debt counseling service to identify all his creditors and develop an action plan for addressing his delinquent debt.

The creditor for SOR debt 1.a cancelled the debt in 2014, and provided Applicant with the appropriate tax form to show income attributable to Applicant (AE E). Applicant entered into a repayment plan with the creditor for SOR debt 1.b in November 2013 to pay \$250 monthly (AE D). The creditor's March 2015 statement reflects that Applicant

had paid \$4,250 to date, reducing the outstanding balance to \$2,551 (AE F). Applicant's May 2015 credit report (AE A) shows that Applicant continues to make payments.

SOR debts 1.c, 1.e, and 1.l-1.n are collection accounts being handled by the same collection agent. Record evidence shows that SOR debts 1.c, 1.l, and 1.m are duplicates, with a current balance of \$2,006 (AE A).³ Similarly, SOR debts 1.e and 1.n are duplicates, with a current balance of zero (AE G).⁴ Applicant's May 2015 credit report (AE A) does not contain any entries that can be traced back to the debts alleged at SOR 1.c and 1.e, which appear, as such, only in the July 2014 credit report (GE 2). Accordingly, the amount of debt at issue is \$27,300.

Applicant has been paying off the medical debts at SOR 1.d, 1.f (judgment), 1.g (judgment), 1.h (judgment), and 1.j (judgment) one at a time. His wife paid the judgment at SOR 1.l because it was for homeowner's association fees as she resides in the home. Applicant denied SOR debt 1.k, claiming that he returned the leased property unused. However, the credit reports reflect that the amount asserted is for early termination fees. Thus, it appears Applicant has some more work to do on this account. Applicant has not been able to locate the creditor for SOR debt 1.o, and notes that this account does not appear on his May 2015 credit report.

Applicant's financial problems were largely related to his three years' unemployment from August 2010 to September 2013. However, he began addressing his debts as soon as he was re-employed at a significant salary. While he was unemployed, he was looking for work and helped his sister through serious medical issues. Applicant nets about \$1,600 biweekly (AE K) and has a \$2,900 monthly budget

³This debt originated as a Walmart card issued by SYNCB with a high credit of \$2,477 (GE 3)—the amount alleged in SOR 1.l (GE 3). It was later sold to GECRB, which reported the debt under GECRB/WALMART, and reported the same high credit of \$2,477, when it sold the account to Midland (GE 3). Midland gave the account a new account number, and reported the \$3,706 balance listed in SOR 1.m (GE 3). Applicant's July 2014 credit report (GE 2) does not list enough of the account number to properly identify the account, but the high credit reported (\$3,806) and the balance due \$3,106 for SOR 1.c appear to correspond to the amount alleged in SOR 1.m, accounting for six months or so of \$100 payments. Midland's February 2015 statement (AE G), reflects both the Midland-assigned account number and the original account number used by SYNCB/Walmart and GECRB/Walmart (SOR 1.l). The statement shows that Applicant originally agreed to pay \$3,600, had made recent \$100 payments in December 2014 and January 2015 (reducing the balance to \$2,306), and had a \$100 payment due in February 2015. Applicant's May 2015 credit report (AE A) shows that the balance has been reduced to \$2,006, confirming that Applicant has continued to make payments.

⁴This debt originated as a Fingerhut account through WEBBANK with a high credit of \$1,018 (GE 2). WEBBANK sold the account to Midland, which gave the account a new number and reported the balance alleged in SOR 1.n (\$1,084)(GE 3). Again, Applicant's July 2014 credit report (GE 2) does not list enough of the account balance to properly identify the account, but the high credit reported (\$1,019) and the balance due (\$794) for SOR 1.e appear to correspond to the amount alleged in SOR 1.n, accounting for six months or so of \$50 payments. Midland's March 2015 statements (AE G) reflect both the Midland-assigned account number and the original account number used by Fingerhut/WEBBANK (SOR 1.l). The statements reflect a \$50 payment in February 2015, with the next \$50 payment due in March 2015, and a current balance of \$265. Applicant settled the account with a final payment of \$215 in April 2015. Applicant's May 2015 credit report (AE A) shows the account with a zero balance.

that provides \$500 in debt payments (AE L). His Government supervisor considers him an excellent worker and extremely trustworthy (AE M). His life-long friend has always known him as a hard worker and a trustworthy individual (Tr. 83).

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. When Applicant closed his business and remained unemployed for three years, he acquired significant debt.⁶ However, he began to address his debts once he regained employment in September 2013.

Under his current plan, Applicant has resolved SOR debts 1.a, 1.l, and 1.n. He has reduced the balance on SOR debt 1.b to \$2,551 and SOR debt 1.m to \$2,006. His documented indebtedness has been reduced to \$9,500—a 65% reduction in his total

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;

indebtedness. As he pays off the debts he is currently working on, he starts paying on the other debts that have not been resolved.

The mitigating factors for financial considerations give Applicant substantial aid. While his 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, his financial problems were due to circumstances beyond his control, and he began addressing his delinquent debts once he obtained stable employment in September 2013. He has continued to address his other delinquent debts since then.⁸ While there is no evidence that Applicant has had any formal financial counseling, he obtained guidance on how to address his debts and has clearly acted to get his finances under control.⁹ While the remaining debt is not insignificant, and Applicant still has a couple of creditors to either locate or begin discussions with, he has demonstrated the willingness and ability to address his delinquent debts. Having addressed his other financial obligations, I am confident these remaining obligations will also be addressed. Overall, substantial progress has been made addressing his delinquent debt.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 his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-q:	For 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 (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).

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