



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 19-01386
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Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not provide sufficient information to overcome the security concerns raised by his financial problems. Applicant’s request for eligibility for access to classified information is denied.

Statement of the Case

On April 10, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as part of his employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information, as required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On June 21, 2019, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

On August 29, 2019, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a File of Relevant Material (FORM). The FORM contained seven documents (Items 1 – 7) on which the Government relies to establish the facts alleged in the SOR. Applicant received the FORM on September 24, 2019, and he was informed he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.

Additionally, Applicant was specifically advised in Section IV of the FORM that he could comment on the accuracy of, or object to the admission of, FORM Item 5 (Summary of Personal Subject Interview, dated July 20, 2018). The record closed on October 24, 2019, after Applicant did not respond to the FORM or object to the consideration of any of the Government's exhibits. I received this case for decision on November 25, 2019.

Findings of Fact

The SOR alleged that Applicant owes \$24,129 for a home equity line of credit (SOR 1.a). In response to the SOR, Applicant admitted the allegation. He also provided a statement to explain how the debt came about, and he provided a copy of an agreement with the collection agency that now owns the account. (FORM, Items 1 and 3). In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 70-year-old employee of a defense contractor, for whom he has worked since October 1997. He stated in his e-QIP that he first received a security clearance in June 1996. Applicant also served in the U.S. Army between 1970 and 1973. He and his wife have been married since August 1988, when they bought a house used as their marital residence until May 2007. At that time, Applicant bought a second house in which he and his wife still reside. Applicant still owns his previous residence, which he has been using as a rental property since moving in 2007. (FORM, Items 4 and 5)

The debt alleged at SOR 1.a represents the balance due from a home equity line of credit (HELOC) Applicant obtained in 2006 for his rental property. At some point he stopped paying that account, and it was charged off by the lender as a business loss in 2015. The required monthly payment had been \$143. Applicant claimed that he was not able to meet his HELOC obligations because of a loss of income that coincided with the need for extensive repairs on his rental property. Applicant also claimed that he was beset by renters who did not honor their leases and who damaged his property.

In July 2018, Applicant was interviewed by a government investigator about the SOR 1.a debt and other financial problems he had experienced beginning in 2000.

Applicant stated at that time his intention to finish remodeling his rental property to market it to renters and cover the mortgages on that property. In response to the SOR a year later, Applicant stated that he had spent \$25,000 since 2017 to restore his rental property, which was empty and not earning revenue during that time. As of July 2019, Applicant claimed that he now has renters and is using a management company to “stay on top of things.” Available information shows that Applicant actually owes \$39,976 for this debt, which is now in collection with another creditor. (FORM, Items 3, 5, and 7)

Additionally, Applicant provided with his Answer information showing that on July 26, 2019, he executed an agreement with the collection agency now holding the SOR 1.a debt. That agreement provided that Applicant would make a \$1,740.92 down payment and 11 monthly payments of \$367.92. If Applicant makes all of the payments required therein by July 2020, his credit report will be updated to show he is current on the HELOC, and the original terms of the HELOC will be restored and his monthly payments lowered to near their previous amount. In short, Applicant has entered into a loan rehabilitation agreement with the collection agency. Applicant made the required down payment on July 16, 2019. He did not provide any information that shows he took other actions to resolve his debt between 2015 and 2019. He also has not sought or received any financial counseling, and the record does not contain any information about his current monthly finances. (FORM, Item 3)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her 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. (See Egan; AG ¶ 2(b))

Analysis

Financial Considerations

Available information shows that Applicant has been delinquent on the debt at SOR 1.a since 2015. That debt remains unresolved. This information reasonably raises the security concerns articulated, in relevant part, at AG ¶ 18 as follows:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

More specifically, the Government's information requires application of the following AG ¶ 19 disqualifying conditions:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

All three conditions apply because Applicant did not pay or otherwise resolve his HELOC debt despite having the time and means with which to do so. He claims he spent \$25,000 on renovations needed to restore the property, yet he did not continue to pay the \$143 each month required by the terms of the line of credit. He did not take any action on this debt for almost four years; however, after receiving an SOR, he has decided to pay more than twice the original monthly amount as part of his loan rehabilitation agreement.

I have also considered the following AG ¶ 20 mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these mitigating conditions apply. Although the debt may have arisen from circumstances beyond his control, Applicant did not establish that he acted responsibly given those circumstances. Applicant's debt remains unresolved despite having the means with which to do so. He has not pursued any financial counseling or other professional assistance in addressing his debt, and the fact that he waited until receiving the SOR to begin a loan rehabilitation program with a collection agency precludes a conclusion that his actions in resolution are done in good faith. On balance, Applicant has not met his burden of production or persuasion to mitigate the security concerns raised by the Government's information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). My review of all of the available information leaves unanswered the doubts about Applicant's suitability for access to classified information that were raised by his financial problems. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is denied.

MATTHEW E. MALONE
Administrative Judge