



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 19-02976
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Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/14/2020

Decision

MALONE, Matthew E., Administrative Judge:

The Government's intent to deny Applicant's request for a security clearance was based on reliable information that reasonably raised a security concern about his finances and his personal conduct. In response, Applicant did not present information sufficient to mitigate those security concerns. Applicant's request for a security clearance is denied.

Statement of the Case

On August 20, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. On December 21 and 28, 2018, and on May 23, 2019, Applicant completed personal subject interviews (PSI) by government investigators as part of the background investigation initiated when Applicant submitted his e-QIP. Based on the results of that background investigation, Department of Defense (DOD) adjudicators could not determine, as required by Security Executive Agent

Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to have a security clearance.

On December 11, 2019, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for financial considerations (Guideline F) and personal conduct (Guideline E). 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 hearing. I received the case on July 21, 2020, and convened the requested hearing on September 3, 2020. I received a transcript of the hearing (Tr.) on September 14, 2020. At the hearing, Department Counsel proffered Government Exhibits (GX) 1 – 6, which I admitted without objection. As to the PSI summaries presented in GX 2, Applicant made a knowing and informed waiver of objection to its admissibility. (Tr. 17 – 20) Applicant testified and presented Applicant Exhibits (AX) A and B, which I admitted without objection. Also included in the record are Hearing Exhibits (HX) 1 (*Index of Government Exhibits*) and HX 2 (*Department Counsel's Discovery Letter*, dated June 29, 2020). At the end of the hearing, I held the record open until September 11, 2020, to give Applicant time to submit additional relevant information to support claims he made during his testimony (Tr. 94 – 95); however, he did not submit anything further.

Findings of Fact

Under Guideline F, the Government alleged that in April 2003, Applicant filed a Chapter 7 bankruptcy petition and was discharged of debts totaling \$41,230 in August 2003 (SOR 1.k). The Government also alleged that Applicant owed \$26,001 for ten past-due or delinquent debts (SOR 1.a – 1.j).

Under Guideline E, the Government alleged that Applicant deliberately omitted from his August 2018 e-QIP the debts alleged in SOR 1.a – 1.j (SOR 2.c); and that during his PSIs on December 21 and 28, 2018, he falsely denied owing any delinquent debts until he was confronted with corroborating information about those debts (SOR 2.d).

Also under Guideline E, the Government alleged that Applicant deliberately made a false statement when he failed to disclose in his e-QIP that, in April 2014, he was suspended from work for two weeks due to misconduct (SOR 2.a). Finally, the Government alleged Applicant made another false statement when, after failing to disclose his 2014 suspension in his e-QIP, he failed to disclose it during his December 21, 2018 PSI; and that it was not until he was confronted during a May 23, 2019 PSI that that he disclosed the suspension. (SOR 2.b).

In response to the SOR, Applicant admitted all of the SOR allegations without comment. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 49 years old and has been employed in an information technology (IT) position by a defense contractor for whom he has worked since October 2019. His previous employer, for whom he worked between August 2018 and October 2019, sponsored his submission of an e-QIP in August 2018, and his current job requires eligibility for access to classified information. In 1997, he earned a bachelor's degree in electrical engineering, and he has earned several IT certifications. (GX 1; Tr. 31)

Applicant was married in May 2003, but divorced in May 2008. He has no children, and he currently rents a room at his brother's house for \$1,000 a month. Shortly before he married, Applicant filed a Chapter 7 bankruptcy petition in which he declared \$41,230 in unsecured debts against \$3,820 in assets. Applicant testified he accrued those unpaid debts by age 31 because he was "young and reckless." Credit reports obtained by government investigators and adjudicators in October 2018 and August 2019, respectively, list the debts alleged at SOR 1.a – 1.j. Those debts became delinquent between 2012 and 2018. (GX 3; GX 4; GX 6; Tr. 71 – 72, 89 – 90)

Applicant first received a security clearance in 1998 for defense contractor work at a military installation. He testified that before submitting his most recent e-QIP, Applicant had submitted as many as ten security clearance applications, and that he views a security clearance to be "as good as gold" and "a license to make money." Since 1998, he has worked for multiple defense contractors in positions that required either a security clearance or eligibility for a public trust position. Between 2009 and 2014, he worked as a government employee for a federal agency. That job required he meet certain production quotas during each performance appraisal period. In April 2014, Applicant was suspended for two weeks for violating workplace policies, including failing to meet his quotas and keeping a work schedule outside of prescribed workday hours. Applicant did not believe he was violating agency rules by working late evening to early morning hours; however, before being suspended he was counseled about the need to adhere to a core workhours policy. He also was counseled about his failure to meet his production goals. (Answer; GX 2; Tr. 32, 36 – 39, 44 – 46, 72, 85 – 86)

In Section 26 (*Financial Record*) of his e-QIP, Applicant did not disclose any of the debts alleged in SOR 1.a – 1.j. He also did not disclose, as required by e-QIP Section 13C (*Employment Record*), that he was suspended for two weeks from his federal employment in April 2014. During his background investigation, he was interviewed on December 21, 2018. The investigator conducting the interview reviewed with Applicant the answers on his e-QIP and Applicant confirmed, in relevant part, that his negative answers in Sections 26 and 13C were correct. (Answer; GX 1; GX 2)

On December 28, 2018, Applicant was re-interviewed about his finances. The investigator initially asked Applicant if he had any delinquent debts, and Applicant

answered “no.” The investigator then confronted Applicant with credit report information that documented several delinquent or past-due debts, including those listed in the SOR. Applicant claimed he omitted the debts from his e-QIP because of a “mental lapse.” At his hearing, he testified that he did not disclose his debts because either he already had paid some of his debts on his own or he was repaying the rest through a debt management plan (DMP) in which he had enrolled before he submitted the e-QIP. (GX 2; GX 3; Tr. 47 – 49, 69 – 71, 74 – 76)

Section 13C of the e-QIP requires disclosure of information about adverse workplace actions in the preceding seven years; specifically, whether an applicant was fired, quit a job after being told he would be fired, left a job by mutual agreement after allegations of misconduct or notice of poor job performance, or had received a written warning, official reprimand, suspended or otherwise disciplined for misconduct. Applicant answered “no” to this inquiry rather than list the two-week suspension discussed above. In listing a reason for his departure from his federal employment in 2014, he stated he resigned. During both of his December PSIs, Applicant failed to disclose his suspension while reviewing his negative answers in Section 13C. He again was interviewed by a government investigator on May 23, 2019, and he initially denied any adverse employment history. After then being confronted with information about his suspension, he acknowledged the incident and provided details about what had occurred. During the May 2019 PSI, he did not provide any explanation about why he did not list the suspension in his e-QIP or why he did not disclose the information during either of his December 2018 interviews. At his hearing, he acknowledged he left his government job in July 2014 by mutual agreement under adverse circumstances related to the underlying causes of his suspension. (GX 1; GX 2; Tr. 36 – 43, 93 – 94)

As to Applicant’s debts, during his December 28 interview, he stated that he fell behind on his debts after being hospitalized. At his hearing, Applicant described being ill while working for the federal government. He testified that he suffered from unspecified intestinal problems which caused him to take time off without pay under the Family and Medical Leave Act (FMLA). However, he did not provide more detailed information about his illness or how it impacted his finances. He has stated that he was unable to work during his illness; however, available information shows that he has been consistently employed, albeit at varying income levels, since at least 1998. Applicant averred that he has paid several of his debts and that he has been repaying others through the DMP in which he enrolled just after he submitted his e-QIP in August 2018. A recent credit report he presented at hearing shows many of his debts have been paid and closed; however, they were closed by the creditor. The record contains no information directly showing actual payments by Applicant to resolve those debts. Put another way, the fact that a credit report may list an account as paid does not mean Applicant resolved the debt. Taken together with the Government’s credit reports, it appears many of Applicant’s debts were sold to collection agencies and may still be his responsibility. The question of proof of payment or resolution was raised at the hearing and Applicant averred he could document his claims that many of his debts had been paid. Despite having extra time after the hearing to provide that information, Applicant has not presented anything further

to corroborate his claims. (Answer; GX 3 – 5; AX A; AX B; Tr. 48 – 65, 67, 75 – 76, 92 – 95)

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

Personal Conduct

Available information shows that Applicant omitted from his 2018 e-QIP relevant adverse information about his employment record and about his finances. He had completed numerous security clearance applications for various jobs since 1998 and was familiar with the requirement that he answer the government's questions truthfully. When interviewed on two occasions by a government investigator about his employment record and his finances, Applicant would not disclose that information until being confronted with credit reports and employment records. All of the record evidence probative of his state of mind when he completed his e-QIP and when he answered investigators' interview questions shows that he knowingly and willfully tried to conceal relevant adverse information from the government.

All of the foregoing reasonably raises a security concern about personal conduct stated, in relevant part, at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

More specifically, information supporting the SOR allegations requires application of the following AG ¶ 16 disqualifying conditions:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

By contrast, I also have considered the potential applicability of following pertinent AG ¶ 17 mitigating conditions:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

None of these mitigating conditions apply. Applicant did not make prompt efforts to correct his omissions from his e-QIP, or to provide accurate information during any of his three interviews. Instead, he persisted in his efforts to withhold information until he was confronted with the facts of his debts and his suspension. Applicant's omissions from his e-QIP and his false statements during interviews were not the result of advice from anyone, much less legal counsel or other authorized source. To the contrary, Applicant apparently relies on the fact that, because of his long experience in completing multiple security clearance applications over the last 20 years, his omissions must be viewed as inadvertent mistakes. That argument fails because of his repeated false statements during interviews, and because his experience in submitting prior clearance applications establishes a presumption that he knew he was required to provide answers that were accurate and complete to the best of his ability and recollection. All of the foregoing also shows that his conduct in this regard is not minor and that it casts doubt on his judgment, trustworthiness and reliability. On balance, Applicant did not meet his burden of persuasion here, and the security concerns addressed under this guideline are not mitigated.

Financial Considerations

As alleged in SOR 1.k, Applicant filed a Chapter 7 bankruptcy petition in 2003 to resolve \$41,230 in delinquent debts he incurred because, in his early 30s, he was “young and stupid” and made bad financial decisions. Between 2012 and 2018, he was well into his 40s and incurred another \$26,001 in delinquent debt as alleged in SOR 1.a – 1.j. This information reasonably raises a security concern about Applicant’s finances that is expressed, in relevant part, at AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

I also have considered the potential application of the following pertinent 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.

AG ¶¶ 20(c) and 20(d) do not apply because available information about any financial counseling, particularly his DMP, is incomplete at best. He engaged in the DMP in 2018, but he has not shown that he has consistently been repaying his debts in a systematic and reliable way, either through the DMP or otherwise. As to AG ¶ 20(b), Applicant has claimed that the debts addressed in the SOR arose when he was hospitalized and could not work. He testified that his illness arose while he was a federal employee and that he had to take time off under the FMLA; however, he did not present information showing how any time off for illness impacted his finances. Applicant lost income when he left federal employment in 2014 because of his own misconduct at work. Even assuming his illness constituted circumstances beyond his control, Applicant did not establish that he acted responsibly in the face of those circumstances. His reliance on a recent credit report does not suffice to show that he acted to pay or otherwise resolve the debts listed as paid or closed. Most of them were closed by the creditor, and debts often are listed as paid when they have been purchased by a collection agency. When that happens, it is incumbent on Applicant to show how the debt was resolved and that he is no longer responsible for it. Applicant's information does not adequately support his claims that he has paid most of his debts, and when given time after the hearing to provide additional information that would corroborate his claims, he did not do so. Finally, AG ¶ 20(a) does not apply because Applicant's debts remain unresolved and his failure to act on those debts, despite the government's scrutiny of his financial problems, undermines confidence in his judgment and reliability.

The security concerns about Applicant's financial problems have not been mitigated. I also evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Available information does not support application any of those factors. His deliberate false statements, his employment history, and his debts still cast doubt about his suitability for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

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
Subparagraphs 1.a – 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	Against Applicant

Conclusion

It is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge