



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



In the matter of:)
)
)
[NAME REDACTED]) ISCR Case No. 20-00388
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2020

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 August 3, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his 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 May 15, 2020, 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 stated that he was “not requesting a hearing as long as [his] written answers are applied to [the] administrative record.” All information he has submitted in connection with this case are included in the record, and are identified and discussed as appropriate in this decision. Accordingly, I conclude Applicant’s Answer waived his opportunity for a hearing, and I have proceeded with this decision based solely on the parties’ written submissions.

On August 20, 2020, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM) that was received by Applicant on August 29, 2020. The FORM contained seven exhibits (Items 1 – 7) on which the Government relies to establish the facts alleged in the SOR. In response (hereinafter FORM Response), Applicant submitted additional information, both updating his Answer and providing two supporting documents. The record closed on October 13, 2020. I received the case for decision on November 12, 2020.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$35,707 for six delinquent debts (SOR 1.a – 1.f). In response, Applicant admitted with explanations SOR 1.a – 1.c. He denied with explanations SOR 1.d – 1.f. (FORM, Items 1 and 2). His admissions establish the SOR allegations as facts. As to his denials, Department Counsel noted that Applicant provided explanations with his responses but no documentation. To be clear, Applicant’s denials framed the allegations in SOR 1.d – 1.f as controverted issues of fact. Accordingly, it became the Government’s responsibility to present sufficient information to prove those allegations. (Directive, E3.1.14) In addition to the facts established by Applicant’s admissions, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor, for whom he has worked as an installer since February 2018. Between October 2004 and November 2016, he worked in similar positions for other defense contractors. He was unemployed for nine months in 2016 and 2017 after a previous employer lost its federal contract. All of Applicant’s work since 2004 has been performed overseas in the same country. Applicant served on active duty in the U.S. Navy between June 1995 and August 2004. He has held a security clearance since at least December 2006. (FORM, Items 3 and 7)

Applicant disclosed in his e-QIP that he had incurred a delinquent credit card debt for \$8,000, and that he had paid off that debt in January 2014. He also disclosed that he had missed one mortgage payment in January 2015, and that had also resolved that past-due debt. During the ensuing background investigation, government investigators obtained a credit report in August 2017 that documented the debts listed at SOR 1.a and 1.f. As to the latter, the report showed Applicant was past-due for \$4,227 on an account

balance in July 2017 of \$11,679. On July 5, 2019, Applicant completed a subject interview (SI) with a government investigator during which he discussed those debts. Applicant denied the SOR 1.a debt was his, suggesting that it actually was his father's debt. Applicant acknowledged the SOR 1.f account was his, but he could not provide details about the origin or history of the debt. He acknowledged during the interview that his spending habits likely contributed to this delinquency. He also stated that he planned to have all of his debt resolved by the end of 2019. A credit report obtained by DOD adjudicators in November 2019 reflects the debts addressed at SOR 1.b – 1.e, but makes no mention of the debts at SOR 1.a or 1.f. All of the delinquent or past-due debts documented by the Government's information were accrued between 2015 and 2017. (FORM, Items 3, 6, and 7)

In response to the SOR, Applicant now acknowledges that SOR 1.a is his responsibility, claiming it is a debt he incurred because he lost track of it as he moved "to different locations." He further asserted that he and the creditor agreed to settle the debt for half of the total owed, which was to be paid by "May 2021." In response to the FORM, Applicant claimed this debt is being paid down; however, he did not support this claim with any payment receipts or other documentation. (FORM, Items 2, 5, and 6; FORM Response)

As to SOR 1.b, in response to the SOR, Applicant claimed that this credit card debt was incurred with a joint user, and that Applicant has contacted the creditor to verify the charges on the card and to arrange for repayment. In response to the FORM, Applicant claimed that the original \$5,371 delinquency has been reduced to \$2,417 and that, as of October 13, 2020, "[p]ayment was being sent via regular mail and (sic) should have a zero balance in the next two weeks." None of this has been documented. (FORM, Items 2, 5, and 6; FORM Response)

When Applicant responded to the SOR, he averred the SOR 1.c debt had been paid off and that he was waiting for confirmation from the collection agency in possession of the account. In response to the FORM, Applicant stated claimed the account had a zero balance and that he anticipated having it removed from his credit history. The account still showed as delinquent in credit reports obtained in November 2019 and August 2020. Applicant did not submit any documentation to support his claims that the debt has been resolved. (FORM, Items 2, 5, and 6; FORM Response)

Applicant denied owing \$1,360 for the delinquent cell phone account alleged at SOR 1.d. The account still showed as delinquent in credit reports obtained in November 2019 and August 2020. Although he disputes this debt as "in error" in response to the FORM, he indicated that he settled the matter and now has a zero balance due with that service provider. Again, there is nothing in the record that supports this claim. (FORM, Items 2, 5, and 6; FORM Response)

Applicant denied the alleged debt for an unpaid utility bill in SOR 1.e. He owns multiple rental properties, and claims that one of his tenants was responsible for this account. Applicant provided documentation showing that he paid this debt in September

2020, and stated he planned to seek reimbursement from his tenant. (FORM, Item 2; FORM Response)

Applicant describes his current finances as sound and claims that he is able to meet all of his regular financial obligations without difficulty. He has worked overseas for most of the past 15 years and ascribes his financial problems to a combination of poor spending habits and his failure to keep track of his accounts caused, in part, by multiple relocations. As of September 11, 2020, Applicant earned a net bi-weekly income of about \$4,000, which equates to about \$8,600 in monthly take-home pay. His paystub also shows he receives a bi-weekly housing allowance of \$1,503, which equates to about \$3,250 monthly. In the FORM, Department Counsel repeatedly highlighted the importance of documentary support for Applicant's claims. Additionally, the deadline for Applicant's response to the FORM was extended for 30 days, yet he did not provide any other information about his monthly expenses or about any professional financial counseling he has received. (FORM at page 3; FORM, Items 2 and 7; FORM Response)

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 between 2015 and 2017, Applicant accrued delinquent or past-due debts totaling more than \$35,000. When the SOR was issued about three years later, with one exception those debts remained unresolved. This information reasonably raises the security concerns articulated, 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. . . . 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:

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

I also have 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. Applicant claims he has been acting to resolve his debts, yet he has not documented his claims. The mere absence of entries in his credit report is not sufficient. Applicant had ample opportunity to submit corroborating information. His financial problems are recent, in that, with the exception of SOR 1.e, they are still unresolved. Although at one point he was unemployed for nine months, he did not present information that shows his debts arose from circumstances beyond his control. Further, Applicant has not acted promptly to resolve his debts. He has not sought professional financial assistance, and he did not show that his finances will not present similar concerns in the future.

On balance, I conclude he has not mitigated 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 unresolved the doubts about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those 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
Subparagraphs 1.a – 1.d, 1.f:	Against Applicant
Subparagraph 1.e:	For 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