



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 20-00846
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Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

09/03/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by the Government's adverse information about her finances. Her request for eligibility for continued access to classified information is denied.

Statement of the Case

On December 12, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as part of her employment with a defense contractor. After reviewing the completed background investigation, adjudicators for the Defense Counterintelligence and Security Agency (DCSA) 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 12, 2020, DCSA issued a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations). The adjudicative guidelines (AG) applied during the adjudication of this case were issued by the Director of National Intelligence (DNI) on December 10, 2016, and have been applied in all adjudicative actions taken on or after June 8, 2017. Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

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 April 1, 2021. The FORM contained seven exhibits (Items 1 – 7) on which the Government relies to support the SOR allegations. Applicant was informed she had 30 days from receipt of the FORM to submit additional information. During that time, Applicant did not submit additional information or object to the admission of any of the Government's documents into the record. The record closed on May 1, 2021, and I received the case for decision on July 20, 2021.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$32,393 for 21 delinquent or past-due debts (SOR 1.a – 1.u). In response to the SOR, Applicant admitted, with explanations, the allegations at SOR 1.b – 1.e, 1.g – 1.k, and 1.t. She denied, with explanations, the remaining SOR allegations (FORM, Items 1 and 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 43-year-old engineer employed by a defense contractor in a position that requires a security clearance. She has held a security clearance since at least 2010 as part of her employment with several other defense contractors since 2008. She was hired for her current position in November 2018. Applicant was married between February 2003 and December 2017, when she and her ex-husband divorced. Together, they had one child, now an adult. (FORM, Item 3)

In her December 2018 e-QIP, Applicant did not disclose any adverse information, financial or otherwise. On January 10, 2019, government investigators obtained a report of Applicant's credit history (FORM, Item 7), which documented all but three (SOR 1.d – 1.f) of the debts alleged in the SOR. On January 31, 2019, Applicant completed a personal subject interview (PSI) with a government investigator. A summary of that PSI (FORM, Item 4) shows that, in relevant part, the interview included a discussion of the debts documented in the aforementioned credit report. For the most part, Applicant stated she did not have any information about the debts. She also stated her intent to arrange payment, by the end of February 2019, of any debts she could verify with her creditors.

On June 12, 2019, government investigators obtained another report of Applicant's credit history (FORM, Item 6). A final credit report pertaining to Applicant was obtained on April 1, 2020 (FORM, Item 5). Together with the January 2019 report, these exhibits document all of the past-due and delinquent debts alleged in the SOR. Additionally, the three credit reports and the PSI summary show that all of the debts at issue here were incurred and became delinquent before June 2019.

In response to the SOR, Applicant first asserts that the debts at SOR 1.a, 1.l, 1.m, 1.o, 1.p, 1.s, and 1.u were assigned to her ex-husband through their December 19, 2017 divorce decree. She provided a copy of that decree with her Answer (FORM, Item 2). Rather than support her claims in this regard, the divorce decree, while contemplating a number of financial matters (mortgage, student loans, car loans, etc.), makes clear that there were no remaining joint, marital debts to be resolved. Additionally, all three credit reports provided by Department Counsel show that the debts at issue in this case are all individual accounts in Applicant's name only. They are not joint accounts, responsibility for which could be shared with someone else – a former spouse, for example. (FORM, Items 5 – 7)

Also in response to the SOR, Applicant states that the medical debts alleged at SOR 1.c – 1.e and 1.g – 1.k stem from treatment she received for injuries suffered in a car accident. She further stated she has retained legal counsel to pursue civil damages against the driver of the car at fault in that accident, and that she plans to use any settlement proceeds to resolve those debts. In support of these claims, Applicant attached to her Answer information from a law firm, as well as reports about the accident itself. Also included is a letter from the law firm to Applicant proposing that she authorize the firm to pay one medical provider directly from any proceeds from her legal action. Applicant's information shows she was involved in an accident for which she was not at fault, and that she was injured and transported for medical treatment as a result of the accident. It further shows that Applicant is represented by an attorney who has contacted the other driver regarding damages. By contrast, her information also shows that the accident in question occurred on July 19, 2019, well after all of the debts alleged in the SOR were reported as past-due or delinquent. (FORM, Items 2 and 5 – 7).

As to the student loan debt alleged at SOR 1.b, Applicant denied that she owes that debt. She also stated that she is contesting the validity of the debt, which she averred is in some form of litigation. She did not support this claim with any corroborating documentation. (FORM, Item 2)

With her Answer, Applicant provided information that on July 17, 2020, she settled the debt at SOR 1.n for about ten percent of the total amount due. She also provided information showing that when the SOR was issued, she was working with a debt-management company to verify and/or contest the debts documented in her credit reports. That information does not show that she has paid or otherwise resolved any of the remaining debts alleged in the SOR. It also does not show that Applicant has received any financial counseling regarding the overall management of her personal finances. (FORM, Item 2)

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 AG ¶ 2(d). 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

Guideline F: Financial Considerations

Available information about Applicant’s record of delinquent and past-due debts reasonably raises a security concern about her judgment and about the possibility she would be prone to engage in improper conduct to resolve her debts. That concern is stated 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.

The Government provided sufficient, reliable information that shows Applicant accrued numerous delinquent debts before June 2019. That information shows that, with one exception, all of those debts remain unpaid or otherwise unresolved. This information establishes the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*).

In response to the SOR, Applicant made claims and submitted information that require consideration of 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Based on my review of all of the available information, I conclude none of these mitigating conditions apply. Applicant's debts are multiple and recent, in that they continue unresolved and are, for the most part, less than seven years old. Applicant did not support her claims that her debts were caused or exacerbated by events and circumstances beyond her control. Her assertions regarding the adverse financial effects of a divorce and a car accident lack credibility. The information she provided about the debt management company she retained does not equate to any identifiable progress in resolving her debts or improving her financial management posture. Further, Applicant

did not document any good-faith effort to pay her debts, and she did not support her claimed disputes with any of her creditors. On balance, Applicant did not meet her burden of production in support of any of the available mitigating conditions. Accordingly, she failed 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). Nonetheless, Applicant's failure to mitigate the security concerns about her finances only serves to sustain the Government's doubts about her judgment and reliability. Because protection of the national interest is the principal focus in these adjudications, any remaining doubts must be resolved against allowing access to sensitive information.

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.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.u:	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