



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
[NAME REDACTED]) ISCR Case No. 20-01361
)
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant was arrested in 2018 for grand larceny of a firearm, a felony, which was later reduced to a misdemeanor to which he pleaded guilty. Additionally, Applicant’s mortgage was foreclosed in 2018, and he has numerous unresolved delinquent debts. Applicant did not mitigate the resulting security concerns about his finances and criminal conduct. His request for eligibility for continued access to classified information is denied.

Statement of the Case

On January 30, 2019, 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 results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA 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 September 14, 2020, DCSA CAF sent Applicant a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). The adjudicative guidelines (AG) applied throughout 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 9, 2021. The FORM contained nine exhibits (Items 1 – 9) on which the Government relies to support the SOR allegations. Applicant was informed he had 30 days from receipt of the FORM to submit additional information. 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 9, 2021, and I received the case for decision on July 20, 2021.

Procedural Issue

Included in the FORM is a copy of Applicant's driving record (FORM, Item 8). It contains no information probative of any of the issues in this case, and Department Counsel made no mention of this document in the FORM and made no proffer of its relevance to Applicant's suitability for clearance. I have not considered this exhibit in reaching my decision in this case.

Findings of Fact

Under Guideline F, the SOR alleged that the mortgage on Applicant's house was foreclosed in 2018 (SOR 1.a), and that he owed \$26,433 for nine other delinquent or past-due debts (SOR 1.b – 1.j). Applicant admitted with explanations the allegations at SOR 1.a, 1.c, 1.d, 1.f, and 1.h. He denied with explanations the remaining allegations of debt. (FORM, Items 1 and 2)

Under Guideline J, the SOR alleged that in January 2018, Applicant was arrested and charged with felony grand larceny of a firearm; that he later pleaded guilty to a lesser included charge of trespassing; and that he was given a suspended sentence of 90 days in jail and ordered to pay restitution. (SOR 2.a) Applicant admitted that he was arrested and pleaded guilty as alleged in the SOR; however, he denied knowingly violating the specific provision of his state's grand larceny statute pertaining to firearms under which he was charged. (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 47-year-old employee of a defense contractor. He was hired for his current position in April 2017, and he requires a security clearance for his assigned duties.

Applicant first received a security clearance in 1997 in connection with his active-duty service in the U.S. Navy. Applicant enlisted in March 1997 and retired as a petty officer first class in March 2017. (FORM, Item 3)

Applicant was married in December 2000 and has two teenage children. Applicant and his wife separated in February 2015. As of the completion of this background investigation a final divorce was still pending. Applicant has another child, age 5, with a woman to whom (as of the date of his SOR response) he is engaged to be married, and with whom he has lived since February 2017. (FORM, Items 3 and 4)

When Applicant and his wife separated, they entered into a private (i.e., not court-supervised) agreement whereby Applicant agreed to pay his wife about \$2,400 each month in child and spousal support. In exchange for that level of support, they agreed his wife would retain their marital residence. She further agreed to refinance the mortgage on their house and, in so doing, have Applicant's name removed from the mortgage and deed. For a variety of reasons, Applicant's wife did not refinance the mortgage or remove Applicant from the deed. She also was unable to find employment to earn sufficient income to pay the mortgage, which was foreclosed in June 2018. Available information shows that the house was resold around the time of the foreclosure. In response to SOR 1.a, Applicant claimed he does not have any remaining obligation under that mortgage; however, during a personal subject interview (PSI) with a government investigator on April 17, 2019, Applicant stated that he and his wife jointly owed about \$43,000 as a balance remainder after resale of the house. There is nothing in any of the credit reports submitted in the FORM that reflects Applicant owes any ongoing debt associated with the foreclosure. (FORM, Items 2 – 5)

When Applicant submitted his e-QIP in January 2019, he disclosed the foreclosure alleged at SOR 1.a and the debts alleged in SOR 1.b – 1.j. During his April 2019 PSI, he discussed all of those matters with a government investigator based on a report of Applicant's credit history obtained on February 14, 2019. Another credit report, obtained by adjudicators on December 10, 2019, also documents the debts alleged in the SOR. Applicant's e-QIP disclosures and the credit reports provided in the FORM show that his financial problems began as early as 2008, while Applicant was still in the Navy and before he separated from his wife. (FORM, Items 3, 5, and 6)

During his PSI and in response to the SOR, Applicant claimed that his financial problems began when he retired from the Navy in March 2017. Even though he began his civilian employment the next month, he avers he did not begin receiving his military retirement pay for "a several months (sic) period." (Answer) As a result of that delay, he claimed, his income was not sufficient to meet the child and spousal support he had agreed to pay when he and his wife separated in 2015. Applicant did not show how he was able to meet his support obligations over the two years before he retired from the Navy, and he did not provide documentation of his civilian income starting in 2017 or of any delay in disbursement of his retired pay. (FORM, Items 1 – 6)

Applicant provided information in response to the SOR that showed the debts at SOR 1.b, 1.g and 1.i were paid or otherwise resolved either in February 2020 or October

2020. He further stated that he is disputing the debt at SOR 1.e. He claims it arose from a failure of one cell phone provider to pay as agreed the cancellation penalties imposed by another cell phone provider when Applicant changed service providers. He did not support this claim with any corroborating documentation. (FORM, Item 2)

Applicant states that he is now divorced. He further claims his support obligations are now \$600 lower than the agreed upon amount at the time of his separation, and that he now is able to pay his debts while still meeting his current financial obligations. (Answer) Applicant did not support these claims with any corroborating documentation, such as any information about his income and the current state of his personal finances, or about any more recent efforts to resolve his debts.

In June 2018, Applicant was arrested and charged with felony grand larceny of a firearm. He claims that a few months earlier, when his girlfriend needed money to cover unexpected travel expenses, she asked Applicant to pawn one of the handguns she owned and kept at their home. Applicant did so and the weapon, which turned out to be a handgun given to her by her father, was held by the pawn shop as collateral for a \$100 loan. A few months later, his girlfriend could not find her father's handgun and she reported to the police that it was stolen. As it turns out, Applicant's girlfriend intended that he pawn a different handgun. When he realized his mistake, he went to retrieve the handgun from the pawn shop. However, the police had identified the weapon as stolen property and Applicant learned he would be charged with stealing the weapon pursuant to a specific criminal statute in his state that makes the theft of a weapon a grand larceny offense regardless of the actual value of the weapon. Applicant turned himself in and was charged as alleged in SOR 2.a. On advice of his attorney, he later accepted a plea bargain whereby he pleaded guilty to a misdemeanor trespassing offense. The court imposed a 90-day jail sentence, which was suspended, and ordered Applicant to pay restitution. (FORM, Items 2, 3, 4, and 7)

In the FORM, the Government relies on Applicant's response to the SOR, his e-QIP disclosure of his 2018 arrest, his explanation of those events in his PSI, and the FBI arrest record obtained by investigators. Additionally, the Government proffered information about a 2001 event not alleged in the SOR. (FORM, Item 9) That information shows that, while in the Navy and entering a military installation, a random administrative vehicle inspection (AVI) of his car as he arrived at the gate produced contraband in the form of an ammunition clip for a .45-caliber handgun. No weapon was recovered and Applicant was not charged with any crime or other misconduct. He was detained without arrest and turned over to his command, who verbally counseled him. This incident was discussed during his PSI. Applicant explained that he no longer owned the handgun, but had forgotten there was a spare ammunition clip in the car. (FORM, Item 4)

Based on the foregoing, the Government argues the following:

While these instances are 17 years apart, [the 2001 AVI incident] demonstrates Applicant's interest in guns and the sale of guns. There is certainly nothing illegal about gun sales when done according to state and local law, but the (sic) government questions whether the Applicant has

been fully forthcoming regarding his activities in this area and the events surrounding his 2018 arrest. (FORM at p. 4)

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 mortgage foreclosure and his record of delinquent and past-due debts reasonably raises a security concern about his judgment and about the risk that he would engage in improper conduct to resolve his 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 starting before he retired from the Navy and before he separated from his ex-wife. That information also shows that most of those debts remain unpaid or otherwise resolved. Additionally, the Government's information supports the SOR 1.a allegation that the mortgage on Applicant's marital residence was foreclosed while he was jointly responsible for that obligation with his now ex-wife. 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;

(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. Applicant established that his financial problems were at least exacerbated by the break-up of his marriage; however, this record also shows that he had already accrued delinquent or past-due debts while still married and serving on active duty. Applicant did not present information that shows his debts arose from circumstances beyond his control or, if they did, that he has acted responsibly in response to those events. Although some of his debts have been resolved, the majority of his financial problems remain unresolved. Additionally, Applicant did not present information about the state of his current finances from which it can be concluded that his finances no longer pose an unacceptable risk under this guideline. Finally, Applicant did not document any good-faith effort to pay his debts, and he did not support his claimed disputes with any of his creditors. On balance, Applicant did not meet his burden of production in support of any of the available mitigating conditions. Accordingly, he failed to mitigate the security concerns raised by the Government's information.

Guideline J: Criminal Conduct

The Government provided sufficient, reliable information that shows Applicant was arrested in 2018 and charged with felony grand larceny of a firearm. That information also shows that Applicant pleaded guilty to a lesser charge of misdemeanor trespass, was sentenced to 90 days in jail, which was suspended, and ordered to pay restitution. This information reasonably raises a security concern about criminal conduct that is addressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

More specifically, available information supports application of the disqualifying condition at AG ¶ 31(b) (*evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted*).

The Government appears to argue in support of AG ¶ 31(a) (*a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness*) by presenting information about the 2001 AVI seizure of handgun ammunition from Applicant's car. This is something that was known to the Government during the investigation and adjudication of this case, yet not alleged in the SOR. Applicant was not charged with any criminal offense or reprimanded for any administrative violation at that time. Instead, he received only verbal counseling from his military chain of command. This information does not demonstrate "Applicant's interest in guns and the sale of guns" and it is not sufficient to impeach Applicant's credibility, even

under the whole-person concept. Indeed, the Federal Rules of Evidence generally would exclude this use of 20-year-old information either to impeach credibility or to show a propensity towards the conduct addressed in SOR 2.a.

As to application of any of the mitigating factors listed under AG ¶ 32, this record requires consideration of the following:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (c) no reliable evidence to support that the individual committed the offense;
and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

A review of all available information probative of these mitigating conditions shows that none apply here. Applicant's arrest and misdemeanor guilty plea are less than three years old. Not enough time has elapsed to establish that Applicant is unlikely to engage in such conduct again. This is especially true because, while Applicant claims he did not knowingly violate the law in his state regarding firearm theft, the court still imposed a 90-day jail sentence and ordered him to pay restitution, ostensibly to his girlfriend whose weapon he pawned. This undercuts any suggestion that there is no reliable evidence that he committed a crime. On balance, Applicant did not meet his burden of presenting information sufficient to support a finding that he has mitigated the security concerns under this guideline.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F and Guideline J, 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 raised by the facts established by the Government's information about his financial problems and his arrest record leaves unaltered the concurrent doubts about his judgment and reliability. Indeed, Applicant's apparent violation of the law to obtain money when his financial problems were at their worst raises a security concern that goes to the heart of the government's concerns under Guideline F. 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.j:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.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