



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 20-00290
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Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro Se*

11/18/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his unresolved debts and intentional false statements to the government about his financial problems. Applicant's request for a security clearance is denied.

Statement of the Case

On October 13, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) 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 to continue Applicant's eligibility for a security clearance.

On April 29, 2020, DCSA CAF issued to Applicant 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 guidelines cited in the SOR were part of the adjudicative guidelines (AG) 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 before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I received the case on October 30, 2020, but delayed scheduling the hearing in response to pandemic-related restrictions imposed by the Secretary of Defense. On July 20, 2021, I scheduled this case for hearing on August 25, 2021, via web-based video conferencing. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 5. Applicant and four witnesses testified, and Applicant proffered Applicant Exhibit (AX) A. I received a transcript of the hearing (Tr.) on September 8, 2021.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$51,870 for 13 delinquent or past-due debts (SOR 1.a – 1.m), ten of which (SOR 1.a – 1.j) consist of delinquent student loans totaling \$48,866, or about 94 percent of the total debt at issue. In response, Applicant admitted with explanations all of the Guideline F allegations.

Under Guideline E, the Government alleged that Applicant deliberately withheld from Section 26 (Financial Record) of his e-QIP all of the adverse financial information alleged in SOR 1.a – 1.m. In response, Applicant denied that he intentionally provided false information or intentionally withheld any information. In addition to the facts established by Applicant's admissions to SOR 1.a – 1.m, I make the following findings of fact.

Applicant is 43 years old. He and his wife have been married since 2002 and have two children, one of whom still lives with them. Applicant served in the Marine Corps as a field radio operator between 1997 and 2001, when he was honorably discharged. (GX 1; Tr. 6)

After working in jobs unrelated to the defense industry between 2001 and 2006, Applicant began working for a series of defense contractors in positions related to his Marine Corps training. He first received a security clearance for his military duties in 1997. In 2008, his clearance was renewed for work with a defense contractor where he worked between 2007 and 2010. Since October 2020, he has worked for a defense contractor as a communications technician; however, his current request for clearance was sponsored

by a previous employer for whom he worked between April 2015 and October 2020. (GX 1; Tr. 59)

On three occasions, Applicant has been laid off when his employers lost the contracts to which he was assigned. He was unemployed for two months in 2007, for one month in 2010, and between October 2014 and March 2015. He has been steadily employed since March 2015. Applicant and his wife have lived in the same home since March 2013, and they have a combined annual income of about \$99,000. Applicant estimates that they have about \$500 remaining each month after expenses; however, other than an employer-sponsored retirement account with a balance of less than \$10,000, they have no savings. By his own admission, Applicant is not very good at managing his money. (GX 1; Tr. 47, 53 – 54)

Applicant attended a technical school between 2004 and 2006, when he earned an associate's degree. Between 2012 and 2014, he returned to school and earned a bachelor's degree. Applicant obtained a series of federally subsidized student loans to fund his studies. At hearing, he testified that he made the required monthly payments on those loans until about 2015 around the time of his most recent period of unemployment. Applicant has not made any payments on his student loans in the past six years. When asked why he did not resume his loan payments when he regained employment, he stated that he forgot about them despite receiving notices from the creditors holding those loans. Eventually, the federal government began diverting Applicant's income tax refunds each year and Applicant considered those diversions as his "payment for the year." (GX 1; Tr. 45, 50, 61 – 62)

The credit reports presented by Department Counsel document all of the delinquent debts addressed in the SOR. All of them were more than 120 days past due, in a collection status, or otherwise delinquent when Applicant completed his e-QIP in October 2017; however, Applicant did not list any of those debts or otherwise indicate that he had any financial problems at that time. In October 2016, he was interviewed by a government investigator about his finances. After initially denying that he had any accounts that were in collection or more than 120 days past due, he was confronted with the contents of a credit report dated December 16, 2017. Applicant then told the investigator that he did not list the student loans because he did not realize they constituted debts to the federal government. He also stated that he was paying them on a monthly basis. In response to the SOR, Applicant stated that he was confused by the questions at issue and did not intend to provide false answers to the questions about his debts. At hearing, he testified that he either did not read the questions carefully or that he did not pay attention to what was being asked by those questions. (Answer; GX 1 – 6; Tr. 45, 55 – 57)

Applicant was re-interviewed on March 18, 2019, and stated that he intended to contact his creditors to establish a repayment plan. Thereafter, he took no action regarding his student loans until July 26, 2021, when he contacted the collection agency holding all ten loans, which now total \$58,135.98, and enrolled in a student loan

rehabilitation plan. That plan was finalized ten days before this hearing and calls for him to pay \$61 monthly for nine months. If he makes those payments as expected, his student loans will be returned to a current status. Applicant does not know if the required monthly payment will increase after he completes the rehabilitation plan. He has not yet made any payments because he is availing himself of relief for student loan payments, regardless of whether they are current or delinquent, provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. I take administrative notice of the fact that in August 2021, CARES Act protections were extended to January 2022. (GX 2; AX A; Tr. 50 – 51, 61 – 62, 64 – 66)

Available information also shows that Applicant still owes the debts alleged at SOR 1.k – 1.m. He has not taken any action on those debts, which have been delinquent since at least 2017, choosing to wait until he has rehabilitated his student loans. Applicant also did not list these debts in his e-QIP, but did not explain why. (GX 1 – 5; Tr. 45 – 47)

Applicant has an excellent reputation in the workplace and his community. Four current and former co-workers testified for Applicant. They have known him for most of the past ten years and are aware of the financial and personal conduct issues in this case. They have observed Applicant to be professional, reliable, honest and trustworthy. They also have observed that he lives modestly and within his means, although those observations are not based on any specific knowledge of his finances. (Tr. 22 – 42)

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. (See *Department of the Navy v. Egan*, 484 U.S. 518)

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

The Government provided sufficient, reliable information to support the SOR allegations under Guideline F. Applicant has admitted those allegations. The facts established reasonably raise a security concern about Applicant's finances that is articulated 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;

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

By contrast, Applicant's response to the Government's information requires consideration 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;
- (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;

None of these mitigating conditions can be applied here. Applicant's financial problems are recent, in that, he still owes more than \$58,000 in delinquent student loans that were subsidized by the federal government. He also owes another \$3,000 for three commercial debts. All of the debts alleged in the SOR have been delinquent for nearly five years, but Applicant only began to address his debts less than a month before his hearing. After last paying on his student loans in 2015, he has yet to resume paying his debts despite being asked about his debts during interviews in 2018 and 2019, when he stated his intent to contact his creditors and arrange repayment plans. Even after he received the SOR in April 2020, he apparently took no action to resolve his debts. Applicant legitimately is excused under the CARES Act from making any student loan payments until 2022; however, this does not excuse the fact that he ignored his debts for several years before the pandemic began.

Applicant suggests that his debts arose from unforeseen circumstances when he was laid off for six months in 2014 and 2016. He did not establish that he acted

responsibly regarding his debts when he again found employment. Applicant also did not provide any information showing he disputes any of the debts alleged or that he sought professional financial counseling to help resolve his financial problems. On balance, Applicant has not mitigated the security concerns raised under Guideline F.

Personal Conduct

Despite Applicant's denial of SOR 2.a, there is sufficient, reliable information to support the SOR allegation under Guideline E. The facts established herein reasonably raise a security concern about Applicant's personal conduct finances that is articulated 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, Applicant's conduct requires application of AG ¶ 16(a):

(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.

All available information probative of Applicant's intent when he completed his e-QIP shows that he decided to ignore the questions about his past-due debts. His claimed confusion about the question is not credible. His negative answers to those questions were not the result of mistake or misunderstanding. Inaccuracies resulting from a knowing decision to gloss over those questions cannot be discarded as unintentional. At the very least, Applicant did not intend to provide the government all of the financial information in

his background on which adjudicators would rely in assessing his suitability for continued access to classified information. Also contributing to my assessment of Applicant's intent and credibility is the fact that he apparently lied to a government investigator during his first interview when he claimed he was making monthly payments on his student loans. Had that conduct been alleged in the SOR, it would require application of AG ¶ 16(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.

I also have considered the 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.

The record does not support application of any of these mitigating conditions. Applicant did not correct his omissions after submitting his e-QIP. When he was interviewed a year later, he first denied owing any debts that were in collection, more than 120 days past due, or otherwise delinquent. Even after being confronted with information about his debts, he was less than honest about why he did not disclose them. Further, Applicant has not claimed that he omitted the adverse financial information pursuant to any qualified advice, and he did not support his claims that his omissions were the result of confusion or misunderstanding.

Applicant's failure to disclose his debts is not a minor transgression. The government must be able to rely on applicants to be candid at all times so that an accurate and well-informed assessment of the risks associated with granting access can be done. His conduct also is recent, in that, even now he has provided conflicting and implausible explanations for his failure to disclose his debts. His conduct in this regard continues to reflect adversely on his judgment and trustworthiness. On balance, Applicant did not mitigate the security concerns raised by his intentional failure to disclose his debts.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The favorable information from his workplace associates is significant. Nonetheless, it does not outweigh the negative effects of Applicant's persistent failure to address his longstanding delinquent debts, or his intentional falsifications in response to the government's questions about his background. The resulting security concerns remain unresolved and sustain doubts about Applicant's suitability for continued access to classified information. 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.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, 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