



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 19-03035
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Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate 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 December 2, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of his employment with a defense contractor. After reviewing the completed background investigation, adjudicators for the Department of Defense (DOD) 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 November 13, 2019, the DOD issued a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence (DNI) 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 decision without a hearing.

On May 25, 2021, 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 July 1, 2021. The FORM contained five exhibits (Items 1 – 5) on which the Government relies to support the SOR allegations. In the FORM, Department Counsel amended the SOR, as provided for by paragraph E3.1.13 of the Directive, by withdrawing the Guideline E allegations.

Applicant was informed he had 30 days from receipt of the FORM to submit additional information. He did not submit anything further and the record closed on July 31, 2021. I received the case for decision on October 6, 2021.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant did not file his federal (SOR 1.a) or state (SOR 1.b) income tax returns for the 2016 tax year; and that he owes \$9,045 for 12 past-due or delinquent debts (SOR 1.c – 1.n). In response to the SOR, Applicant admitted all of the Guideline F allegations. (FORM, Item 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a 43-year-old employee of a defense contractor, for whom he has worked since May 2018. In his e-QIP, he disclosed that he had not filed his federal or state income tax returns for the 2016 tax year, but stated that he would file those returns "within the three-year deadline." He has not produced any information showing that his past-due returns have been filed. (FORM, Item 2)

Applicant did not disclose any other adverse financial information in his e-QIP. During his background investigation, government investigators obtained credit reports in January and September 2019 that document all of the debts alleged in the SOR. Applicant has not produced any information regarding the current status of his debts. Available information does not show that he has acted to repay or otherwise resolve his debts, or that he has obtained any financial counseling or other professional financial assistance. Finally, he has not presented any information about his current finances. (FORM, Items 4 and 5)

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

Financial Considerations

Available information shows that Applicant still has not filed his 2016 income tax returns. It also shows that he still owes \$9,045 for 12 delinquent or past-due debts. 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

I also have considered 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;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The Government's information presents a *prima facie* case for disqualification. Accordingly, it was incumbent on Applicant to present sufficient reliable information on which application of available mitigating conditions could be based. He did not do so. The record does not support any of the cited mitigating conditions. Applicant did not meet his burden of persuasion to overcome the Government's case for disqualification from access to classified 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). The record evidence as a whole presents unresolved doubts about Applicant's suitability for access to classified information. His ongoing financial problems leave him at risk of engaging in unacceptable conduct to resolve his debts. Further, his apparent lack of action in that regard reflects adversely on his judgment. 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
Subparagraph 1.a - n:	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