



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



In the matter of:)
)
)
[NAME REDACTED]) ISCR Case No. 19-02912
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Anny Leon, Esq.

03/11/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant accrued numerous delinquent or past-due debts between 2011 and 2018. He did not present information sufficient to support his claims that he has paid or is in the process of resolving most of his past-due debts. Accordingly, he has not mitigated the security concerns about his financial problems and his request for continued access to classified information is denied.

Statement of the Case

On March 30, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On December 13, 2019, DOD issued to Applicant a Statement of Reasons (SOR), which alleged facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). 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 requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). I received the case on October 22, 2020. On December 7, 2020, Department Counsel amended the SOR by adding an additional allegation. Applicant timely responded, but did not object, to the additional allegation. I initially set this matter for hearing on December 15, 2020; however, Applicant requested a continuance. Without objection, I granted Applicant's request for good cause shown and the hearing was rescheduled for January 26, 2021. The parties appeared as scheduled. Applicant testified and presented Applicant Exhibits (AX) A – F. Department Counsel proffered Government Exhibits (GX) 1 – 4. The Government also provided a copy of the letter by which its exhibits were forwarded to Applicant in advance of the hearing, as required by paragraph E3.1.13 of the Directive. It is included in the record as Hearing Exhibit (HX) 1. DOHA received a transcript of the hearing (Tr.) on February 5, 2021.

Additionally, I left the record open after the hearing to receive additional relevant information from the Applicant. (Tr. 73 – 74) On February 5, 2021, Applicant proffered AX G – J. The record closed on February 10, 2021, when Department Counsel waived objection to admissibility of Applicant's post-hearings submissions. The Government's waiver is included as HX 2.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$33,996 for 22 delinquent or past-due debts (SOR 1.a – 1.v). In response, Applicant admitted with explanations all of the SOR allegations. (Answer) As noted, above, Department Counsel amended the SOR by adding as SOR 1.w an allegation that Applicant owes an additional \$4,503.22 for a state tax lien entered against him in June 2018. Applicant admitted SOR 1.w without explanation. Accordingly, the total amount of debt at issue is \$38,499.22. The SOR amendment and Applicant's response to it are included as HX 3. In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 41 years old and was hired by his current employer in November 2019. He requires a security clearance as part of his assigned duties. He has worked in information technology (IT) positions, mostly with federal contractors, since August 2007. In 2010, Applicant earned an associate's degree in computer network systems, and he holds multiple IT certifications. He has held a security clearance since 2008. (GX 1; AX B; Tr. 33)

Applicant and his wife have been married since December 2007. They have one child, age 13. In 2013, Applicant became the legal guardian of two nephews, now ages 20 and 17, after their mother died. In 2020, he took in another child whose parents (Applicant's sister's brother-in-law and his wife) died within a year of each other. All four children still live with Applicant and his wife. (GX 1; Tr. 29 – 31)

In Section 26 (Financial Record) of his most recent security clearance application, Applicant did not disclose any adverse financial information. However, credit reports obtained during his background investigation disclosed the debts alleged in the SOR. In September 2018 and March 2019, Applicant was interviewed by a government investigator, with whom he discussed, inter alia, the debts alleged in the SOR. At Applicant's hearing, he testified that he was unaware of the debts at issue in this case until he received the SOR in December 2019. (GX 1; Tr. 28, 61 – 63)

After graduating from high school, Applicant was enrolled at a local community college between July 1997 and May 2009. Between September 2006 and December 2010, Applicant also studied for his associate's degree at a privately-owned technical school. To finance his education at both schools, he obtained several student loans. The debts alleged at SOR 1.a, 1.f, 1.q, and 1.v are student loans that became delinquent between 2011 and 2014. The debts alleged at SOR 1.a and 1.f are the result of consolidations of some of his loans in 2016; however, Applicant has not made any payments on those loans since they were consolidated. (GX 2 – 3; AX E; Tr. 28, 33, 43 – 50)

In response to the Government's information, Applicant claimed that the student loan debts in the SOR are no longer his responsibility. He cites a class action lawsuit brought by the Bureau of Consumer Financial Protection against the technical school where he studied for his associate's degree. He further claimed that the suit resulted in a nullification of student loans obtained through the school. In support of his claim, he proffered a proposed "Stipulated Final Judgment and Order" filed in federal court in September 2020. The only creditor mentioned in that document is the one cited in SOR 1.q. The document does not constitute a final order or other manner of resolution that would relieve Applicant of any of the student loans addressed in the SOR. Further, Applicant testified that he also has a letter that supports his claim that he no longer is responsible for SOR 1.a, 1.f, 1.q, and 1.v. Despite being allowed additional time after the hearing, he has not produced that letter. (Answer; AX J; Tr. 22 – 23, 25, 43 – 44)

Applicant has several chronic medical issues that require regular medications and have resulted in multiple hospitalizations. He estimates that between 2014 and 2019, he spent a total of three weeks out of work due to illness, and that he lost about \$5,400 in income over that period. Applicant has always had employer-provided health insurance. The debts alleged at SOR 1.b, 1.d, 1.e, and 1.g – 1.p represent unpaid medical expenses comprised of co-payments and other services not fully covered by his insurance plan. (Tr. 21 – 22, 28, 58 – 61)

During his direct testimony and on cross-examination, Applicant averred that he has paid the debts at SOR 1.b – 1.e, 1.g – 1.p, 1.t, and 1.u. He also claimed that he has been working with the creditor at SOR 1.r by making \$188 payments each month. As to SOR 1.s, Applicant averred that he is making \$100 monthly payments to bring that credit card account current. In most cases, Applicant has based his claims on the absence of information about those debts in his most recent credit report. He also stated that he had additional corroborating information he could submit; however, despite being allowed additional time after the hearing, he has not produced that information. (Answer; AX E; Tr. 22 – 27, 50 – 54)

The debt alleged at SOR 1.w is for a state tax lien obtained against Applicant in June 2018. In response, Applicant presented information about a past-due EZ-Pass toll Account. His position is that when the EZ-Pass became delinquent, the state converted it to a tax lien. He also averred that his father has paid \$2,500 toward that debt and that Applicant now owes only \$1,809 after making a \$170 payment in January 2021. When asked to provide information that supports his claim that the state where he lives somehow converts EZ-Pass debts to tax liens, Applicant produced only additional information about his EZ-Pass account. (Answer to SOR Amendment; GX 4; AX F – I; Tr. 31 – 32, 54 – 57, 72)

Aside from a two-month period of unemployment after his employer lost a contract in January 2014, Applicant has been steadily employed (with insurance benefits) in the IT field for the past 13 years. His current job pays him an annual salary of \$128,000 and that he brings home about \$5,200 each month. The job he had between May 2016 and November 2019 paid him a starting annual salary of \$88,000. When he left to take his current job, he was making \$118,000 annually. Applicant also receives Social Security benefits as assistance connected to the custody of his two nephews, and his wife earns about \$600 monthly as a waitress. Applicant did not provide any documentation of his earnings. (Tr. 19 – 20, 37)

In addition to his medical challenges, Applicant claimed his financial problems have been caused or exacerbated by his wife's marital infidelities, gambling, and substance abuse. He testified that those behaviors occurred between 2016 and 2019, and that aside from continued online gambling expenditures each month of less than \$100 since 2019, her conduct has not been an impediment to their finances. He did not explain, however, how his wife's conduct was related to the fact that most of the debts at issue in this case became delinquent before 2016. (Tr. 28 – 29, 40 – 43, 66)

Applicant has never paid rent or had a mortgage for a home of his own. Since 1996, after living in the home in which he was raised, Applicant has lived in a house owned and paid for by his father. Applicant's only living expenses are the money he contributes for utilities and food. He estimates that he has less than \$100 remaining each month. When he responded to the SOR, Applicant stated that part of his plan to resolve his debts relied on his ability to pay off one of his car loans by June 2020 and reallocate the \$700 monthly car payment to resolve other debts. Applicant still owes \$4,000 for that

car loan because his car was repossessed in 2020 and the loan was refinanced so he could keep the car. Applicant also indicated that he expected to apply his income tax refunds, which he reports have averaged between \$7,000 and \$8,000, to debt payments; however, he did not provide any information that supports his testimony in this regard. (Answer; Tr. 21, 63 – 65)

In December 2020, at the behest of his attorney in this case, Applicant engaged in online financial counseling services. He credits those services with his ability to better organize his finances, the only identifiable example of which is a nascent monthly budget he tracks on an eraser board in his house. Additionally, Applicant submitted several letters of recommendation and support in which he is described as reliable, trustworthy, knowledgeable in his profession, and honest. Applicant also is active in his community's sports programs as a coach and organizer. (Answer; AX A; Tr. 31, 38 – 40)

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

The Government established that Applicant incurred numerous delinquent or past-due debts between about 2011 and 2018. As of the close of the background investigation, most of those debts had not been paid or otherwise resolved. One of the delinquent debts documented by the Government’s information is a state lien for a delinquent tax debt. This information reasonably raises a security concern about Applicant’s finances that is 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. . . .

Applicant has been gainfully employed for at least 13 years. Since at least May 2016, he has earned an annual salary that should have been sufficient to avoid most of the delinquencies documented by the Government’s information, especially in light of his relatively low housing expenses and consistent medical insurance coverage. Additionally, despite having additional time after the hearing, Applicant did not support his claims that he has paid or otherwise resolved his debts. His response to information about his state tax lien was not credible. Applicant may be trying to resolve a delinquent or past-due EZ-Pass account, but he did not corroborate his claim that collection of the EZ-Pass account is being enforced through a state tax lien. All of the foregoing 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;
- (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.

By contrast, I 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;

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

Applicant's debts are multiple and recent, in that, they continue largely unresolved. In response to the Government's information, Applicant did not support his claims of repayment and he did not provide information about other efforts to resolve his financial problems. While his medical issues have presented challenges over the years, he has had consistent medical insurance coverage and sufficient income that at least enabled him to address unexpected expenses aside from co-payments. Applicant's claim that his finances suffered because of his wife's behavior likewise is untenable. By his own admission, those issues arose after he fell behind or defaulted on his student loans and most of his other debts. They also have not been a problem since 2019. Even though his medical issues and his wife's conduct were beyond his control, Applicant did not show that he acted responsibly under those circumstances. This is especially true given the resources at his disposal since at least 2016. Although Applicant has used financial counseling, it was only in the month before his hearing and he produced only minimal information about the extent of those services or how they have helped him resolve his debts. Finally, Applicant's response to information about his state tax lien does not show that he is repaying the debt or is otherwise working with the tax authority to resolve his

tax obligations. All of the foregoing precludes application of any of the mitigating conditions cited, above.

The Guideline F security concerns are not mitigated. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's associate's speak well of his integrity, and he is active in his community. His willingness to step in and raise his nephews and another child reflects positively on his character and commitment to family. Nonetheless, his failure to properly address his financial problems continues to undermine confidence in his judgment. The information he presented in response to the Government's case did not resolve the doubts raised thereby. Because protection of the national interest is the paramount focus of these adjudications, those doubts must be resolved against the Applicant.

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.w:	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