



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 21-01191
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Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/19/2022

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial problems. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On January 12, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of her employment with a federal contractor. After reviewing the completed background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively 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 22, 2021, the DCSA CAF issued a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations). 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 August 31, 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 September 22, 2021. The FORM contained six exhibits (Items 1 – 6) 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. She did not submit anything further and the record closed on October 22, 2021. I received the case for decision on December 2, 2021.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$125,742 for eight past-due or delinquent debts (SOR 1.a – 1.h). 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 44 years old and is sponsored for a security clearance by a federal contractor. In her January 2021 e-QIP, she disclosed that she owed approximately \$24,000 for four delinquent or past-due debts. A credit report obtained by government investigators in March 2021 documented these and other delinquencies about which Applicant was interviewed by a government investigator on March 19, 2021. During the interview, Applicant attributed her financial problems to a combination of living beyond her means and an unexpected loss of hours at a previous job that reduced her income. (FORM, Items 4 – 6)

During her March 2021 interview, Applicant advised that she did not think she was responsible for several of the debts listed in her credit report, and that she does not intend to pay them. She also stated that she is disputing responsibility for her student-loan debts (alleged at SOR 1.a and 1.b) because the school she attended was engaged in fraudulent activities. Specifically, she claimed that she was told she would receive a bachelor's degree from the school, but only received an associate's degree. In her e-QIP, Applicant listed that she received a bachelor's degree from that school in May 2013. The last payment she made on her student loans was in 2008. (FORM, Items 4 – 6)

Applicant did not provide any information in response to the SOR or the FORM that would document her claimed dispute about her student loan obligations. She also did not produce any information about her current finances or efforts to resolve her debts.

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 owes more than \$100,000 for eight delinquent debts that she has not yet addressed or resolved. Her debts arose, in part, because she was living beyond her means. 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; and
- (c) a history of not meeting financial obligations.

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; 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.

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. She did not do so. The record does not support any of the cited mitigating conditions. Applicant did not meet her 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. Her ongoing financial problems leave her at risk of engaging in unacceptable conduct to resolve her debts. Further, her apparent lack of action in that regard reflects adversely on 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

Subparagraph 1.a – 1.h: 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