



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 20-01851
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Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2022

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by her unresolved delinquent debts and by her failure to timely file her federal income tax returns between 2008 and 2016. Applicant's request for a security clearance is denied.

Statement of the Case

On October 14, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for possible 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, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, make an affirmative determination that it is clearly

consistent with the interests of national security to grant Applicant's request for a security clearance.

On January 4, 2021, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was one 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). The case was assigned to me on November 19, 2021, and I convened the requested hearing via web-based video conferencing on December 14, 2021.

The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 4. Applicant testified and produced Applicant Exhibits (AX) A – G. I received a transcript of the hearing (Tr.) on December 22, 2021.

Applicant objected to the admissibility of GX 4, a summary of Applicant's personal subject interviews (PSI) by a government investigator in November and December 2019, on grounds of relevance. She otherwise agreed that the summary was accurate and that she would be willing to adopt it as her own statement. I overruled her objection and admitted GX 4. (Tr. 22 – 31) Department Counsel objected to AX A because the letters contained therein were not signed and should not carry persuasive value. I overruled that objection and admitted AX A. (Tr. 32 – 33) The remaining exhibits proffered by both parties were admitted without objection.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$18,386 for 23 delinquent or past-due medical debts (SOR 1.a – 1.w), and that she owed \$16,969 for the delinquent remainder after a car repossession (SOR 1.x). The Government also alleged that Applicant did not timely file her federal income tax returns for the 2008 through 2016 tax years (SOR 1.y). In her response to the SOR (Answer), Applicant denied with explanations all of the SOR allegations.

In her Answer, Applicant claimed that the debts alleged at SOR 1.b, 1.c, 1.e – 1.j, and 1.t had been paid or otherwise resolved. In support of these responses, she included documents supporting her claims, but only as to SOR 1.c and 1.e. Regarding SOR 1.g – 1.j, Applicant averred that those debts were paid by her attorney. In support of this claim, she provided information documenting a lawsuit settlement whereby her debts to a medical facility totaling \$35,700 were resolved through a single payment of \$15,000 in October 2017. Applicant denied the allegations at SOR 1.a, 1.d, 1.k – 1.p, 1.r, 1.s, 1.u, and 1.v, stating that she was "unfamiliar" with those accounts and did not have any

information about them. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 37 years old and has been sponsored for a security clearance by a defense contractor for whom she will work if her request for a clearance is granted. Applicant attended a state university between 2003 and 2008 but did not earn a degree. She then studied at a technical training school to be a medical assistant between October and December 2012, but did not complete those studies either. Starting in March 2018, Applicant studied for a degree in intelligence studies, which she received in December 2021. (GX 1; GX 4; AX H)

Between January 2008 and April 2009, Applicant worked as a restaurant server and as an optometry technician. Between April 2009 and July 2012, she worked as an assistant in a business run by her boyfriend. She left that job when they broke up. For the next five months, she worked as a certified medical assistant but left that job when she became sick and required surgery in November 2012. Applicant's illness was a condition she first developed around 2000 and for which she has had multiple surgeries starting in 2002. Applicant was unemployed between January and April 2013, after which she started working at an environmental engineering company owned by her father. She worked there until January 2016, but she claims she received no pay. Instead, she claims her father paid for her room and board and other expenses, including her medical bills. (Answer; GX 1; GX 4; AX E; Tr. 43 – 45, 85 – 89)

In January 2016, Applicant started working as an executive assistant with a company in the healthcare industry. On May 17, 2016, she and her boss were driving from a business meeting when they were involved in a car accident that left Applicant with injuries to her arm, shoulder, and neck. Having no medical insurance, her subsequent medical expenses totaled at least \$35,000, but were resolved for \$15,000 from the proceeds of a settlement she received in November 2017. That settlement totaled \$100,000, of which Applicant received \$60,000 in November 2017 after medical expenses and legal fees. Since May 2016, Applicant has supported herself using those settlement proceeds and whatever savings she had at the time of the accident. She currently spends about \$2,000 each month for rent and other basic expenses, and financed her undergraduate studies through student loans that included money for living expenses. Applicant estimates that she will owe a total of \$46,000 for those loans when they are no longer in deferment or forbearance. At a monthly expense rate of \$2,000 since November 2017, Applicant would have spent \$96,000 by November 2021. She did not present any current financial information and acknowledged that she has not earned income through regular employment since 2018. (Answer; GX 1; GX 2; AX D; Tr. 59 – 63, 86 – 89, 93 - 95)

In her e-QIP, Applicant did not disclose any adverse financial information. At the outset of the ensuing background investigation, a credit report obtained by investigators on November 2, 2019, documented the debts alleged at SOR 1.a – 1.x. Applicant subsequently discussed those debts with a government investigator during her PSI on

November 27, 2019. A credit report obtained by the government on March 26, 2021, did not reflect any past-due or delinquent debts attributable to Applicant. (GX 1 – 4)

As alleged at SOR 1.x, Applicant's vehicle was repossessed for failure to make the necessary payments on the loan she obtained to pay for the car. In her December 4, 2019 PSI, Applicant averred that the vehicle was repossessed while she was in the hospital in November 2012; but she also has claimed her father (who died in December 2018) sold the car and paid off the balance owed. Further, she has claimed she made a \$10,000 down payment on the vehicle and was making \$1,000 monthly payments, well in excess of the payments required by the terms of the loan, reducing the loan balance to about \$1,000 before she was hospitalized in 2012. However, Applicant's claims in this regard conflict with information showing that in November 2019, the balance was \$16,969. Applicant has not produced any corroboration for her assertion that she had nearly paid off the loan or that any remaining debt had been resolved. This debt does not appear on the most recent available credit report, but there is no indication in the record as to why. (Answer; GX 2; GX 4; Tr. 47 – 48, 77 – 79, 98 – 101)

As alleged in SOR 1.y, Applicant did not file federal or state income tax returns for the tax years 2008 through 2016. Applicant denied the SOR allegation; however, she stated in her PSI and at her hearing that she had not filed for those years. A review of IRS regulations for individual filing requirements (see 26 U.S.C. § 6012) suggests that between 2008 and 2016, the minimum annual income required to trigger a filing obligation likely was less than \$7,000. That figure was raised in 2017 to \$12,950 to coincide with major revisions to the U.S. tax code that year. Applicant has acknowledged that she made more than \$10,000 in 2012 and should have filed an income tax return for that year. She believes her father may have filed that return for her while she was receiving medical treatment in late 2012 and early 2013. In support of her claim that she was not required to file returns for the years alleged in SOR 1.y, Applicant submitted a self-generated statement regarding her non-filing of returns in 2019 or 2020. With that statement, she provided various unsigned IRS forms pertaining to her receipt of tuition assistance and estimated taxes for 2021. None of this information supports her claims about why she did not file her taxes between 2008 and 2016. (Answer; GX 4; AX C; Tr. 48 – 50, 65 – 77, 101 - 103)

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 presented sufficient information to support the SOR allegations that Applicant did not timely file her federal income tax returns for at least nine consecutive tax years. Available information also shows she accrued at least 24 delinquent or past-due debts totaling \$35,355. This information reasonably raises 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;
- (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 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.

Available information does not support any of these mitigating conditions. Applicant did not support her claims that she was not required to file federal income tax returns for any of the years alleged in SOR 1.y. Her claim in this regard would be an acceptable affirmative defense; however, it was her burden to support that claim. The documents she provided in response to that allegation did not address her income for those years; nor did they present any reliable information from the IRS about her filing status. Additionally, her testimony on this issue was not credible.

As to her medical debts, Applicant established through her Answer that the debts at SOR 1.c and 1.e. Information about the medical debts at SOR 1.g – 1.j shows they likely were resolved using funds from the 2017 accident settlement. As to the car repossession debt at SOR 1.x, Applicant's response was both convoluted and not credible. She stated in her PSI that she paid down the debt to a \$1,000 remaining balance. She also stated that her late father sold the car and paid off the loan for her while she was in the hospital in 2012. Applicant provided no information from the lender or other source that might tend to support her claim. Again, I found her credibility to be lacking on this issue.

Applicant's debts arose from circumstances (e.g., illness and car accident) beyond her control. Nonetheless, she did not establish that she acted responsibly or promptly in the wake of those circumstances. She has not contacted her creditors or engaged in any professional financial counseling or assistance, even in the year since the SOR was issued. Information about her current finances includes reliance on student loans for tuition *and* living expenses to augment the \$60,000 she has likely expended since the accident settlement four years ago. The result is a looming \$46,000 debt that has been in deferment since late 2021. In sum, available information does not instill confidence that Applicant will be able to resolve her remaining debts and to achieve the sort of financial stability that indicates the level of good judgment required for access to classified information, and which would serve to avoid similar security concerns in the future. On balance, Applicant has not mitigated the security concerns raised under Guideline F.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The security concerns raised by the Government's information remain unresolved and sustain doubts about Applicant's suitability for continued access to classified information. In this regard, I have considered the letters of recommendation presented on her behalf. However, in addition to the financial considerations in this case, my doubts about Applicant's judgment and reliability stem from her convoluted statements during her PSI and testimony, which, at times, simply was not understandable or credible. 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.b, 1.d, 1.f, 1.k – 1.y: Against Applicant

Subparagraphs 1.c, 1.e, 1.g – 1.j: For 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