



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 21-00377
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Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

03/25/2022

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On January 9, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew his eligibility for access to classified information as part of his employment with a federal contractor. After reviewing the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not make an affirmative determination that it was clearly consistent with the interests of national security for Applicant to have access to classified information. Such a determination is required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On June 23, 2021, the DCSA CAF issued a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations). The

adjudicative guideline (AG) cited in the SOR was among those 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 November 29, 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 January 2, 2022. The FORM contained six exhibits (Items 1 – 6) on which the Government relies to support the SOR allegations.

Applicant was informed he had 30 days from receipt of the FORM to submit additional information. He did not submit anything in response to the FORM and the record closed on February 1, 2022. I received the case for decision on March 17, 2022.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$31,117 for 16 past-due or delinquent debts (SOR 1.a – 1.p), and that his wages were garnished while working for a previous employer in March 2019 (SOR 1.q). In response to the SOR, Applicant admitted all with explanations the allegations at SOR 1.a – 1.e, 1.i, 1.k, 1.l, 1.o and 1.p. He denied with explanations the remaining allegations. (FORM, Item 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 34 years old and works in an information technology (IT) position for a federal contractor. He was married from April 2012 until July 2015, when he and his ex-wife divorced. They have one child under age ten for whom Applicant pays monthly support. Applicant served in the United States Marine Corps. He enlisted in April 2008 and was honorably discharged in April 2012 with the rank of sergeant. While in the Marines, he twice deployed to Afghanistan between January 2010 and July 2011. He has worked for federal contractors since September 2016 and was hired by his current employer in November 2019. (FORM, Item 1)

Applicant's denials of seven of the SOR allegations left the burden of proof for those controverted facts with the Government. (See Directive, E3.1.14) In his e-QIP, Applicant disclosed that in January 2017, he accrued a \$3,000 arrearage in his child support obligation, and that this debt was resolved in January 2019 through automatic deductions from his bi-weekly paychecks. During his background investigation, additional information obtained through credit reports and during a personal subject interview of Applicant by a government investigator yielded the information on which all of the SOR allegations are based. The Government established the facts controverted by Applicant's denials. (FORM, Items 1 – 5)

In his Answer, Applicant claimed he had paid some of his debts, was making payments on other debts, or that he would be making payments in the future to resolve still other debts. He also averred that he was working with a law firm specializing in credit repair and debt resolution. In connection with that effort, Applicant stated that he is

disputing some of his debts or that he no longer owes others. Finally, he discussed the factors and circumstances underlying his financial problems. Because the Government established the SOR allegations as facts, it was incumbent on Applicant to present information in support of his response to the SOR. He did not provide any information with his response and he did not respond to the FORM.

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 \$31,000 in past-due or delinquent debts incurred after his divorce in 2015. Based on this record, his debts are still outstanding. 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. 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, ongoing financial problems reflect adversely on Applicant's 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.q:	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