



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 20-00814
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Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2022

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On November 28, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for access to classified information required as part of his 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 for Applicant to continue to have access to classified information.

On June 30, 2020, 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 one of the guidelines 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 February 18, 2022, 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) containing eight exhibits (Items 1 – 8) on which the Government relies to support the SOR allegations.

Applicant received the FORM on March 3, 2022, and 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 April 3, 2022. I received the case for decision on May 13, 2022.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$50,656 for ten past-due or delinquent debts (SOR 1.a – 1.j). The debts alleged at SOR 1.f – 1.h are for unpaid medical bills. Also alleged are unpaid federal (SOR 1.i) and state (SOR 1.j) taxes for the 2016 tax year. The debt at SOR 1.a is for past-due child support payments, and SOR 1.c – 1.c address delinquent credit card accounts. In response to the SOR, Applicant admitted with explanation all of the Guideline F allegations. (FORM, Items 1 and 3) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 51 years old and is sponsored for a security clearance by his employer, a federal contractor, for whom he has worked since August 2005. He has held a security clearance since 2007. He was married between 2004 and 2013, when he was divorced. Applicant and his ex-wife have two children for whom he is obligated to pay \$370 weekly in child support. According to an October 2018 credit report, Applicant owed \$13,035 in past-due child support payments that had been referred for collection. A November 2019 credit report showed that delinquency had been reduced to \$11,691 as alleged in SOR 1.a. In response to the SOR, Applicant averred he had reduced that obligation to \$4,500 but he did not provide any corroboration of that claim. (FORM, Items 2, 3, 6, and 7)

In his most recent e-QIP (FORM, Item 3), he disclosed several of the debts alleged in the SOR. All of the debts alleged in the SOR are further documented by Applicant's admissions thereto, and by the documents provided by Department Counsel with the FORM. (Items 2 – 7) Applicant has asserted in response to SOR 1.b – 1.h that he will pay those debts after he has satisfied his child support delinquency. He also claimed that he has paid the 2016 federal and state income tax debts. He did not provide any support for his responses. (FORM, Item 2)

Applicant asserted that his financial problems are the result of his 2013 divorce, a failed business, unplanned house repairs, and excessive child support obligations. He also cited medical costs stemming from an emergency room visit, surgery, and other

medical procedures and treatments as causes for his financial problems. He did not provide any further detail about those circumstances or other information to support his claims.

As to any financial counseling or other corrective measures, Applicant asserted in his e-QIP that he was consulting an attorney and intended to file for bankruptcy protection to resolve his debts. Again, there is nothing in the record to support or expound on this claim.

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, despite the claims made in his Answer, that Applicant owes more than \$50,000 for ten delinquent debts. It appears from this record that most, if not all, of the debts alleged remain unresolved. 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 presented 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. His debts are multiple and recent, as it was not established they have been paid. While his divorce may qualify as a circumstance beyond his control, Applicant did not establish that he has acted responsibly in the face of those circumstances. There is no information that supports his claims of payment or that shows when those payments may have been made. As for his tax debts, he did not support his claims that those have been paid. In summary, 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 addressing his financial problems reflects adversely on his 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.j: 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