



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 21-02414
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Applicant for Security Clearance)

Appearances

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

07/18/2022

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On April 24, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information required as part of her 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 January 5, 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 is among 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 March 9, 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 seven exhibits (Items 1 – 7) on which the Government relies to support the SOR allegations.

Applicant received the FORM on March 31, 2022, and 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 April 30, 2022. I received the case for decision on June 17, 2022.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$34,239 for six past-due or delinquent debts (SOR 1.a – 1.f). 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 58 years old and is sponsored for a security clearance by her employer, a federal contractor, for whom she has worked since December 2011. In March 2017, she obtained additional, part-time employment to supplement her federal contractor income. Applicant first received a security clearance in connection with her duties as an enlisted member of the United States Army, where she served between 1982 and 1992. She earned a bachelor's degree in May 2009. (FORM, Item 4)

Applicant and her husband have been married since October 2002. Her two previous marriages ended by divorce. She has two children, now in their thirties, from her first marriage. She has no financial ties to either of her ex-husbands. (FORM, Items 4 and 5)

In the remarks section at the end of her April 2021 e-QIP, Applicant disclosed that she was experiencing financial difficulties, but she did not provide any detail about her debts. A credit report obtained by government investigators in May 2021 documented the debts alleged in the SOR. She discussed and acknowledged those debts and her financial problems during two personal subject interviews (PSI) with a government investigator in June 2021. (FORM, Items 4, 5, and 7)

Applicant attributes her financial problems, initially, to a period of unemployment between January and November 2011, when she started working for her current employer. The primary cause of her financial problems, however, stems from the loss of her husband's income in 2018 when he had a stroke and became unable to work. He is still unable to return to the workforce and Applicant intends to begin the process of

applying for Social Security disability benefits on her husband's behalf. (FORM, Items 3 and 4)

In response to the SOR, while stating that she is able to meet all of her present financial obligations, Applicant stated that she still does not have sufficient income with which to address her delinquencies. She did not present any information that shows she has paid or otherwise addressed her debts. She has not consulted with a professional financial planner or debt counselor to advise her on how best to rectify her financial difficulties. The debts at SOR 1.a – 1.c consist of past-due student loans totaling \$31,380, or about 90 percent of the total debt at issue. Applicant has stated her plans to consolidate those debts as part of a student loan rehabilitation program and at least restore them to a current status with minimal income-based payments. She did not present any information that shows she has acted on that plan. (FORM, Items 3 and 5)

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 supports the allegations that Applicant owes more than \$34,000 in delinquent or past-due debts. It appears from this record that her debts have not been addressed and that they 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; 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; and

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

Applicant's admissions in her response to the SOR, and the rest of 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. She did not do so. The record does not support any of the cited mitigating conditions. Her debts are multiple and recent, insofar as they remain unpaid. Applicant's unemployment ten years ago may initially have caused Applicant financial distress, which in turn was exacerbated by her husband's stroke and loss of income in 2018. These facts arguably constitute circumstances beyond her control. Nonetheless, Applicant did not establish that she has acted responsibly in the face of those circumstances. Applicant's low level of income persists and is an understandable impediment to meaningful repayment; however, she did not establish that she has contacted her student loan creditors, or that she sought any advice or counseling regarding how best to address her financial problems.

In summary, Applicant did not meet her burden of persuasion to overcome the Government's case for disqualification from access to classified information. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's ongoing financial problems leave her at risk of engaging in misconduct to resolve her debts. More importantly, her apparent lack of action in response to her financial problems creates doubts about 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.f: 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