



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[Name Redacted]) ISCR Case No. 20-03171
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Applicant for Security Clearance)

Appearances

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

08/23/2022

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On February 13, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information required as part of her prospective 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 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. Such a determination is required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2,

On February 20, 2021, the DCSA CAF issued a Statement of Reasons (SOR) alleging facts which raise security concerns about Applicant's finances. Adjudicators applied the adjudicative guidelines (AG) issued by the Director of National Intelligence (DNI) on December 10, 2016, and 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 15, 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 nine exhibits (Items 1 – 9) on which the Government relies to support the SOR allegations.

Applicant received the FORM on May 2, 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 June 1, 2022. I received the case for decision on August 4, 2022.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$112,860 for 26 delinquent debts (SOR 1.a – 1.z). In response to the SOR, she admitted with explanation the allegations at 1.a – 1.v, and denied with explanations the debts at 1.x – 1.z. (FORM, Items 1 and 2) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 57 years old and is sponsored for a security clearance by a prospective employer, a federal contractor. Since October 2018, she has worked for a different company; however, it is not clear from the record if that company is also a federal contractor. She is single, but was previously married eight times between May 1984 and November 2014, when she and her most recent husband divorced. One marriage ended when she was widowed in April 2004. She has three adult children. (FORM, Items 3 and 4)

With the exception of SOR 1.x and 1.y, available information supports all of the allegations in the SOR. (FORM, Items 2 – 7) Credit reports show that most of the debts listed in the SOR have been delinquent since 2016 or 2017. Applicant asserted in response to the SOR that her financial problems stem from her most recent divorce in 2014. During her personal subject interview (PSI) on March 30, 2020, she stated her finances also were adversely impacted between June and October 2018, when she had to leave her job in State A and travel to State B to care for her mother. Applicant had little or no income during that time, but was rehired when she returned to State A.

Applicant also averred that she is now getting her finances in order. To that end, she claims she had multiple properties voluntarily repossessed. She did not specify what those properties were. Additionally, on January 22, 2021, she filed a Chapter 7 bankruptcy petition through which she declared \$104,259 in liabilities against \$9,750 in assets. She listed the creditors from SOR 1.a – 1.w, and 1.z in her petition, and she was discharged of debts totaling \$104,259. It is not clear from this record if all of the SOR

debts, including the \$39,000 civil judgment alleged at SOR 1.z, were discharged. (FORM, Items 8 and 9)

SOR 1.x and 1.y allege Applicant has two State A tax liens filed against her in August 2017 (\$1,012) and September 2012 (\$859), respectively. She denied both allegations, claiming they both have been paid in full, SOR 1.x since 2017. To establish these controverted issues of fact, the Government presented undated printouts from the LexisNexis reporting system. It is not clear from that information what type of taxes were the subject of the liens. The LexisNexis documents also include a disclaimer regarding the accuracy of the information being reported:

Important: The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. (FORM, Item 7)

The debts at SOR 1.x and 1.y do not appear in either the March or December 2020 credit reports included in the FORM. Further, the tax liens were not discussed, as were all of the other debts (including the civil judgment at SOR 1.z, which Applicant also denied) at issue here, during the PSI. Finally, after the trustee in Applicant's bankruptcy completed his due diligence review of Applicant's liabilities and assets, the State A tax liens were not listed in the Chapter 7 bankruptcy petition. On balance, I conclude the FORM does not contain sufficient information to establish SOR 1.x and 1.y. (FORM, Items 2 and 4 – 9)

The civil judgment at SOR 1.z was included in Applicant's bankruptcy petition. During her PSI ten months earlier, Applicant stated that she did not intend to pay that judgment. (FORM, Items 4, 8 and 9)

Applicant did not provide any current information about her income and expenses. She also did not provide information showing that she has sought financial counseling or other assistance in managing her personal finances. She completed financial counseling only as a prerequisite of filing for bankruptcy protection; however, she did not show how that counseling may have helped her correct her financial problems. (FORM, Items 8 and 9)

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 accumulated significant personal debt that has been past-due or delinquent since at least 2016. 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.

As noted, the tax liens alleged at SOR 1.x and 1.y are resolved for Applicant. The record evidence as a whole shows she did not take any discernable action to resolve her debts until January 2021. As to one of her larger debts – the \$39,000 civil judgment addressed at SOR 1.z – she told a government investigator in 2020 that she did not intend to pay that debt.

The Government's information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; 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 response to the SOR, as well as the rest of the Government's information, presented a *prima facie* case for disqualification based on the remaining 24 of the 26 allegations of delinquent debt. 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 claims her latest divorce in 2014 and a four-month period of unemployment four years ago are to blame for her financial problems. She did not show how those events caused her to amass such a large amount of debt. Further, even if those events are accepted as circumstances beyond her control, she did not establish that she acted responsibly in the face of those circumstances.

To show what she has done to resolve her debts, Applicant relies mainly on the discharge of more than \$104,000 of debt through Chapter 7 bankruptcy. While such a response may, in some circumstances, be reasonable, it should only be undertaken after all other reasonable options have been exhausted. Applicant did not establish that, from the time her debts became delinquent (between 2016 and 2018) and the filing of her bankruptcy petition in 2021, she made any good-faith efforts to resolve any of her debts. Indeed, she expressed her unwillingness to pay or otherwise resolve the civil judgment at SOR 1.z. Her debts are multiple and recent, insofar as they went unaddressed until just over a year ago. She has not shown that her current finances are sound or that she is managing her finances so as to avoid similar financial problems in the future.

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 financial problems and her failure to respond thereto until early 2021, well after she was interviewed about her debts in 2020, reinforce the doubts about her judgment, reliability, and trustworthiness that stem from her history of indebtedness. 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.w, 1.z:	Against Applicant
Subparagraphs 1.x and 1.y:	For 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