



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 21-00231
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Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

03/02/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his unresolved delinquent debts. His request for a clearance is denied.

Statement of the Case

On January 28, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for 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 affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant's request for a security clearance.

On November 12, 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 DCSA CAF issued the SOR pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (Answer) on November 15, 2021, and asked for a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 25, 2022, and I scheduled a hearing to be held on December 8, 2022, via online video teleconferencing. The parties appeared as scheduled, and I received a transcript of the hearing (Tr.) on December 22, 2022. Applicant testified in his own behalf. He did not present any documentary exhibits or other witness testimony. DOHA Department Counsel proffered Government Exhibits (GX) 1 – 7. Applicant objected to the admissibility of GX 3 and I sustained his objection. (Tr. 15 – 16) The remaining proffered exhibits were admitted without objection.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant did not file as required his federal (SOR 1.a) and state (SOR 1.b) income tax returns for the 2018 tax year. It also alleged that Applicant owed \$41,185 for 22 delinquent or past-due debts (SOR 1.c – 1.aa). Ten of the debts alleged (SOR 1.c – 1.h and 1.x – 1.aa) are for unpaid medical bills totaling \$5,570. Three of the debts alleged (SOR 1.o – 1.q) are for unpaid student loans totaling \$15,513. The remaining 12 allegations (SOR 1.i – 1.n and 1.r – 1.w) address unpaid commercial accounts totaling \$20,615. In his Answer, Applicant admitted all of the allegations without comments. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

At the outset, I resolve SOR 1.a and 1.b for Applicant. In his July 29, 2021, response to interrogatories propounded by Department Counsel, Applicant presented substantial information showing he filed his 2018 and 2019 income tax returns in 2020. Available information shows that the late filing of his taxes was an isolated event caused by circumstances beyond his control, that he has otherwise complied with his tax reporting obligations, and that he does not owe any unpaid taxes. (GX 2; Tr. 21, 34 – 35, 38 – 39, 49)

Applicant is 38 years old and is employed in an information technology (IT) position by a defense contractor, for whom he has worked since August 2019 after a three-month period of unemployment. Except for brief periods of unemployment due to the end of contracts, he generally has been steadily employed since about July 2007, when he

completed his studies at a technical institute. Since November 2016, he has worked primarily for federal contractors. (GX 1; GX 2)

Applicant and his wife have been married since August 2010, but they have been separated since August 2018. Applicant petitioned for divorce in February 2019, and a hearing to finalize their divorce is scheduled for the end of May 2023. Applicant and his wife have two children, ages 16 and 10. Between 2018 and 2020, the children lived with their mother and Applicant paid her \$1,860 for monthly support. Applicant has had sole custody of his children since then and his wife is now required to pay him the same for monthly support. She satisfied that obligation through an involuntary wage garnishment until August 2022, when she moved to another state. She now owes him about \$7,000 in unpaid support. (GX 1; GX 2; Tr. 25 – 27, 39 – 40)

Applicant attributes his financial problems to a combination of the effects of a serious car accident in 2014, his estranged wife's financial malfeasance while they were together, and the expenses associated with their pending divorce. He also recently began caring for and financially supporting his mother. (GX 2; Tr. 11)

During their marriage, Applicant's wife did not work outside the home and did not contribute financially. In 2017, Applicant started traveling for work three weeks out of each month on average. While he was away, he had to rely on her to manage their finances; however, in 2017 and 2018, she failed to pay their rent on time to such an extent that they were evicted for non-payment from one residence and accrued significant late fees and forfeitures of deposits at another. Also, during this period, she opened several credit accounts under his name and neglected to pay them as required. When they separated in 2018, Applicant had to fund both his own residence and a residence for his wife and children. (GX 1; GX 2; Tr. 23 – 25)

On May 30, 2014, Applicant was injured in a car accident and was unable to work for nine months. He supported himself and his family through workman's compensation payments and drawing on his savings. The medical and commercial debts alleged in the SOR first became past due in late 2014 and early 2015 because of his loss of income in 2014. Additionally, some of the pain medication prescribed for Applicant included controlled substances. When he was hired by a federal contractor in 2018, he was still taking some of those medications and reported his circumstance to his facility security officer (FSO), who subsequently reported it through the Joint Personnel Adjudication System (JPAS). This had the unintended result of placing a hold on Applicant's ability to obtain a security clearance. In May 2019, Applicant was terminated from his employment because he could not get a clearance. He was unemployed for the next three months before starting his current job. His loss of income along with his ongoing separation and its associated costs further adversely impacted his finances. (GX 1; GX 2; Tr. 11, 22 – 23, 33)

Applicant obtained the student loans listed in the SOR to fund his tuition for technical school in 2007. Almost from the outset, he has been unable to consistently make

the required payments on those loans because he was not making enough money. He last made a regular payment in 2010 or 2011. He communicated with his student loan creditors in late 2020, but took no further action. He again contacted his student loan creditors in mid-2021 to see what federally-mandated relief might be available, and he testified that he intends to submit an application for an Income-Driven Repayment (IDR) plan. He did not produce any documentation to corroborate his claims in this regard. (GX 2; Tr. 30 – 31, 44 – 45)

In April 2020, Applicant started working with a credit repair firm to challenge and separate his wife's financial information from his credit history. During his May 21, 2020, personal subject interview (PSI) with a government investigator, he provided information about his monthly finances in which he claimed he was making \$730 debt payments, but he did not specify which debts were being paid or how much. That summary of his finances showed he still had a positive monthly remainder of about \$1,000. At hearing, he testified that since October 2022, he has paid some of his smaller debts, such as the SOR 1.e, 1.f, and 1.g debts, which total less than \$100. His testimony about his monthly finances showed he has about \$2,000 remaining each month after expenses; however, he also testified that legal fees and other expenses related to his divorce take up most of his remaining money. Applicant did not submit any documentation of payments, correspondence with creditors, disputes with creditors, or other efforts to address his debts. (GX 2; Tr. 21 – 22, 27 – 30, 34 – 35, 40 – 45)

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 (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. (*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. (*Egan* at 531; see AG ¶ 2(b))

Analysis

Financial Considerations

In response to pre-SOR interrogatories, Applicant established he had resolved his past-due tax filings for the 2018 tax year. Nonetheless, the Government met its burden of producing sufficient, reliable information to support the remaining SOR allegations that Applicant had accrued significant past due or delinquent debt that is still outstanding. 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; and
- (c) a history of not meeting financial obligations.

Available information also requires consideration of 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.

The Government's information supported the SOR allegations and established disqualifying conditions under this guideline. In response, it fell to Applicant to produce sufficient, reliable information that mitigates the security concerns raised by the Government. He did not meet his burden. After a thorough review of this record, I conclude that none of these mitigating conditions can be applied. Applicant's financial problems are multiple and recent, in that, his debts have been past due or delinquent for almost ten years in the case of his student loans. Despite the fact he incurred his debts through circumstances beyond her control, he did not establish that he acted responsibly in the face of those circumstances. There is no identifiable documentation of repayment or other actions to resolve his debts. Nor is there a record of good-faith effort to resolve his debts, as most of the efforts he discussed have only occurred in the past six months. To his credit, he has used a credit repair firm to address his debts; however, that has not produced results in the form of actual resolution of even some of his debts. On balance, I conclude Applicant has not met his burden of persuasion and that he has not mitigated the security concerns established by the Government's information.

I also have considered the potential application of the whole-person factors at ¶ 2(d). The record evidence as a whole presents significant remaining doubts about Applicant's suitability for access to classified information. Because protection of the

national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

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:	For Applicant
Subparagraphs 1.c – 1.aa:	Against 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