



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 20-01488
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Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about his finances. His request for a security clearance is denied.

Statement of the Case

On October 8, 2019, 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 September 22, 2020, 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 May 4, 2021, and asked for a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was originally assigned this case on June 9, 2022; however, after being unable to contact Applicant to schedule a hearing, I returned the case for future reassignment. The case was reassigned to me on January 3, 2023, and I was able to schedule a hearing to be held on February 15, 2023, via video teleconferencing. The parties appeared as scheduled, and I received a transcript of the hearing (Tr.) on February 28, 2023. Department Counsel proffered Government Exhibits (GX) 1 – 5, as well as a list of Government exhibits and a copy of a discovery letter dated June 28, 2021, which are included as Hearing Exhibit (HX) 1 and 2, respectively. Department Counsel also provided a demonstrative exhibit, which I have included in the record as HX 3. (Tr. 20 – 30)

Applicant testified in his own behalf and submitted documentary evidence identified as Applicant's Exhibits (AX) A. (Tr. 31 – 32) I held the record open after the hearing to receive additional relevant information. Applicant timely submitted four additional exhibits identified as AX B – E. No objections to admissibility were raised by either party and all proffered exhibits were admitted. The record closed on March 3, 2023.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owed \$59,393 for ten delinquent student loans (SOR 1.a – 1.j). In response, Applicant admitted each SOR allegation and provided documents in support of his responses. (Answer)

On February 8, 2023, Department Counsel amended the SOR by adding allegations (SOR 1.k – 1.m) that Applicant was 120 days past due a total of \$7,210 for two credit card accounts, and for missed mortgage payments. Applicant admitted all three additional allegations. (Answer 2) The amendment is included in the record as HX 4. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 34-year-old employee of a defense contractor, for whom he has worked since September 2019. This appears to be his first application for a security

clearance. He graduated from college in August 2012 with a bachelor's degree in finance. He funded his tuition through the ten federally-guaranteed student loans addressed in SOR 1.a – 1.j. After graduating, he was first unemployed, then under-employed until August 2013, when he was hired by a federal contractor in State A for whom he worked until May 2015. That position paid about \$36,000 annually. He then worked for another federal contractor in State A at a higher salary until he was hired for his current position in State B at an annual salary of about \$86,000, an increase of about \$10,000 annually from his previous job. (Answer; GX 1; Tr. 8, 36 – 37).

Applicant and his wife have been married since October 2021. She was unemployed at the time, but was hired for a teaching position in August 2022 with an annual salary of about \$56,000. She also used student loans to pay for her college education. (Tr. 36, 60 – 61)

When Applicant graduated in August 2012, he asked to have his student loans deferred because he either had no income or held jobs paying less than \$10 hourly. After the deferment ended in January 2014, he was obligated to pay about \$700 a month. He made occasional payments, but the loans became delinquent in January 2015, and he last made a required payment in August 2019. (GX 3; Tr. 38 – 42)

In response to the SOR, Applicant claimed he thought the loans had been consolidated and that his mother was helping repay them. As it turns out, Applicant's mother had obtained other student loans in her own name to help him pay his tuition. Applicant further claimed he was not aware of his delinquencies and the adverse effects they had on his credit until his wages were garnished in 2019. Further, he attributed his inability to repay his student loans, in part, to the fact his wages were being garnished. In March 2020, Applicant stopped making any payments because of the student loan relief measures provided through the Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted by Congress. (Answer; GX 2)

Applicant did not contact his student loan creditors after his loans became delinquent in 2015 or after his wages were garnished in 2019. With his Answer, he provided information that showed he owed a total of \$69,593, and that he had enrolled in a student loan rehabilitation program on April 29, 2021, just before he responded to the SOR. That program called for Applicant to make monthly payments of \$327 between May 2021 and March 2022. As of this hearing, he had made two of those payments in May 2021. Interest accrual on, and repayment of, qualifying federally guaranteed student loans are currently scheduled to resume in September 2023 and October 2023, respectively. Applicant insists he will be able to afford those payments and will make them as required. He described his student loans as being in good standing but at a "standstill" because of COVID relief measures. (Answer; AX B; Tr. 33 – 34)

Applicant moved from State A to State B in 2019. He and his wife bought a house in State B in May 2022. Using only Applicant's income, the purchase was financed with a \$385,000 mortgage. The required monthly payment for principal, interest, taxes, and

insurance is \$2,876. As of November 2022, he was three months past due and, as alleged at SOR 1.m, owed \$6,128. On February 2, 2023, around the time he answered the SOR, he paid \$4,500 toward that debt. On March 1, 2023, he paid another \$3,500 to his mortgage debt. Applicant explained that to pay this and his other debts, he withdrew about \$11,000 from a 401(k) retirement account to apply to his debts. He understands that he will incur an income tax penalty because of his early withdrawals from his retirement account. Additionally, about two weeks before his hearing, he contacted the mortgage lender to discuss a repayment plan for the \$1,600 arrearage he says he still owes. He did not provide any further information showing he and the lender had established such a plan or that he was making his regular mortgage payments. (Answer 2; GX 5; AX A; AX E; Tr. 34 – 35, 49 – 50, 52 – 54)

After Applicant bought his house in 2022, he opened the accounts listed in SOR 1.k and 1.l to buy home improvement materials. The SOR 1.k account is a regular retail credit account at a home improvement store. By February 2023, he was at least 120 days past due on that account. After the hearing, Applicant paid off that debt on March 1, 2023. He opened the SOR 1.l account at a flooring store because it included an offer of no interest for 12 to 18 months using the store's financing. He thought that meant he did not have to make a payment for that period. I held the record open after hearing, in part, to allow him to provide information that would support what amounts to a dispute about his obligation to pay this debt. After the hearing, he provided documentation of a \$969 payment on March 1, 2023, towards an account balance of \$4,014. The record does not reflect any regular payments on this account and it is not clear if his payment was made to settle his obligation. (GX 5; AX C; AX D; Tr. 47 – 52)

Applicant asserts that he and his wife live frugally, have tried cutting expenses, and use a monthly budget. He provided no written information about their finances, and he has not sought professional financial counseling. Together they earn a gross annual income in excess of \$140,000. However, his wife has her own student loans to repay and is trying to build up her savings at the same time. For all practical purposes, they are supported by Applicant's income only. Although their house is titled in both their names, only his name is on the mortgage, and only his income is available to support both of them and to repay his past-due and delinquent debts. They have about \$1,000 remaining each month after expenses excluding debt payments. (Tr. 58 – 66)

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

The Government met its burden of producing sufficient, reliable information to support the SOR allegations that Applicant accrued significant past-due or delinquent debts. 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 AG ¶ 20 mitigating conditions that pertain to these facts and circumstances:

- (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.

AG ¶¶ 20(c) and 20(e) do not apply. Applicant has not sought any professional financial or debt-resolution assistance to address his debts. He also did not provide any

information that would support his dispute or misunderstanding regarding the SOR 1.l debt.

As to his student loans, Applicant initially fell behind due to unemployment and under-employment. He was able to defer the loans after he graduated from college, but when they came due in January 2014, he was only able to make sporadic payments until January 2015, when they became delinquent. He claims he was not aware they were considered delinquent until August 2019, when his wages were garnished to satisfy the loans. However, even then, he did not contact the student loan creditor to try and resolve his arrearages. It was not until April 2021, well after he received the SOR, that he enrolled in a student loan rehabilitation program intended to bring his loans current after he made 11 specified payments. He made two of those payments. Applicant cited the CARES Act COVID relief measures in explaining why he had not made more payments; however, his loans already had been delinquent for about five years before those relief measures were implemented. His loans are now current insofar as they are essentially held in abeyance until the CARES Act relief ends later in 2023. But given Applicant's lack of attention to those obligations since 2019, I have little confidence that he will meet the requirements of the student loan rehabilitation plan and, thereafter, continue to pay the student loans listed in SOR 1.a – 1.j.

Applicant appears to have resolved the home improvement store account alleged at SOR 1.k; however, he did so only after the hearing. The information he provided about his other commercial debt and his mortgage does not show he has resolved those obligations. He did not support any claim of dispute about the SOR 1.l account, and it is not clear from this record that he is paying that debt as required or that it is in good standing. The same can be said about his mortgage at SOR 1.m. Applicant made two large payments to that account in February and March 2023, but he has not shown that he is making his regular monthly payments as required or that he has reached a resolution of that obligation with the lender. The information pertaining to SOR 1.k – 1.m shows that his recent finances are not sound, in that, since May 2022, Applicant has been unable to remain current on his newer debts.

Finally, aside from a period of under-employment about ten years ago, Applicant did not show that any of his delinquent or past-due debts arose from circumstances beyond his control. Based on the foregoing, AG ¶¶ 20(a), 20(b), and 20(d) do not apply. Applicant did not act on his student loans for at least three years after his wages were garnished and only then after he received the SOR. Likewise, the payments he has made to his more recent debts do not constitute good-faith or show that his finances no longer reflect adversely on his judgment and reliability. I conclude that Applicant has not mitigated the security concerns about his finances.

I also have considered the potential application of the whole-person factors at ¶ 2(d). The record evidence as a whole leaves unresolved the doubts about Applicant's suitability for a clearance that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications,

those remaining doubts must be resolved against the granting of 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

Subparagraphs 1.a – 1.m: 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