



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 22-02622
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Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2023

Decision

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns about Applicant’s finances. His request for eligibility for access to classified information is granted.

Statement of the Case

On August 5, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of his employment with a federal contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information, as required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On January 31, 2023, DOD sent Applicant a Statement of Reasons (SOR) alleging facts and security concerns addressed under Guideline F (Financial Considerations). The action was taken pursuant to and consistent with Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. 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) that Applicant received on March 18, 2023. The FORM contained seven exhibits (Items 1 – 7) on which the Government relies to support the SOR allegations. Applicant had 30 days from receipt of the FORM to object to any of the Government's exhibits or to provide other additional information. He did not submit any further information, and he did not file any objections to the Government's exhibits within the allotted time. The record closed on April 17, 2023, and I received the case for decision on June 1, 2023.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owes \$51,485 for 16 delinquent or past-due debts (SOR 1.a – 1.p). The nine debts alleged at SOR 1.a – 1.i are for delinquent student loans totaling \$45,470, or about 88 percent of the total alleged in the SOR. In response to the SOR, he admitted all of the allegations and provided explanations and supporting documents. (FORM, Item 1) In addition to the facts established by Applicant's admissions, and based on my review of the information presented in the FORM, I make the following findings of fact.

Applicant is a single, 41-year-old employee of a federal contractor, for whom he has worked since July 2021. He has two children, ages 6 and 14, for whom he is obligated to provide monthly support payments. He served in the Army National Guard between 2001 and 2007, and in the Navy Reserve from 2008 until 2011. (FORM, Items 2 and 3)

Applicant earned an associate degree in 2013, and a bachelor's degree in 2016. He used a combination of student loans and educational benefits from the Department of Veterans Affairs (VA) to finance his tuition. This appears to be his first application for a security clearance. (FORM, Items 2 and 3)

In the e-QIP he submitted in August 2021, Applicant disclosed that he was behind on his child support payments in the amount of \$2,300, but that he was making weekly payments of \$63.50 to resolve that debt. During the ensuing background investigation, available information showed, as alleged at SOR 1.j, that he owed \$4,100 for past-due child support. In response to the SOR, he admitted this debt; however, he also provided information showing he has paid off that debt and that he was able to do so after saving money once he gained full-time employment in 2021. The most recent credit report submitted by the Government shows that his child support account is current. (FORM, Items 1, 2, 4 – 7)

During a personal subject interview (PSI) on September 13, 2021, Applicant further disclosed that he owed more than \$43,000 in student loans. Again, he cited unemployment as the underlying reason he incurred those debts. During Applicant's background investigation, available information showed, as alleged in SOR 1.a – 1.i, that he owes \$45,470 in delinquent student loans. The most recent credit report provided by the Government shows that these accounts are still delinquent as alleged. In response to the SOR, he provided information showing that on February 7, 2023, he enrolled in an income-based student loan rehabilitation program with the U.S. Department of Education. Aside from a two-page letter acknowledging his enrollment, he did not provide any information about his income, a schedule of payments, or a record of previous payments. He also did not explain why he did not enroll in the program earlier; however, the letter mentions "the payment pause." This likely refers to the payment pause on student loans provided for through the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed into law by President Trump in 2020. The moratorium on student loan payments was extended by President Biden, but is now scheduled to end in October 2023. (FORM, Items 1 and 3)

Available information also supports the allegations of the delinquent debts at SOR 1.k – 1.p. SOR 1.k is for a delinquent gym membership referred to a collection agency. Applicant admits he once had an account with that creditor, but avers he satisfied all of their requirements when he left the gym but was charged for another year anyway. He has been trying unsuccessfully to contact the gym and the collection agency. SOR 1.l is for a delinquent cell phone account. Applicant also disputes this account and has been unable to contact the creditor or to obtain any current information about this debt. Neither of the debts alleged in SOR 1.k and 1.l are more than seven years old, but they do not appear on the two most recent credit reports provided by the Government. (FORM, Items 1, 3 – 7)

The debts at SOR 1.m and 1.n are for past-due utility accounts. SOR 1.o and 1.p are for past-due medical bills that were not covered by insurance. None of these debts appear on the most recent credit reports and with his Answer, Applicant provided information showing he has paid both debts. (FORM, Items 1, 3 – 7)

Before being hired for his current job, Applicant was self-employed as a photographer and graphics designer between April 2020 and July 2021. This was only part-time work, and he supported himself with help from his parents and by donating plasma for money twice weekly. It was not until he started his current employment that he had reliable full-time income and benefits. Between January 2017 and April 2020, he was unemployed four times for a total of 25 months. When he discussed his financial problems during his PSI, and in his response to the SOR, he cited his unemployment two of those three years as the underlying cause of his financial problems. He further averred that now that he is steadily employed with a defense contractor, he is able to repay his debts and to meet all of his current financial obligations. (FORM, Items 1 – 3)

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 SOR allegations and reasonably raises the security concern about finances stated 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, this record requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The record also supports application of the following pertinent mitigating conditions available under AG ¶ 20:

- (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;
- (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(a) and 20(b) apply because Applicant's debts are the result of being unemployed for 25 of the 39 months between January 2017 and April 2020. Even then, he was self-employed on a part-time basis for the next 15 months before being hired by a defense contractor in July 2021. Since being steadily employed, he has resolved a child support arrearage and several smaller debts. His disputes of two of the debts alleged –

SOR 1.k and 1.l – are plausible and likely valid given their absence from his most recent credit reports. As to his student loans, he has enrolled in an income-based rehabilitation program and is expected to begin payments in October 2023, when the CARES Act moratorium ends. His resolution of his other debts shows he is likely to follow through with his student loan payments.

All of the foregoing is sufficient to mitigate the security concerns established by the Government’s information. In addition to my evaluation of the facts and my 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). A fair and commonsense assessment of the record evidence as a whole supports a finding in favor of 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: FOR APPLICANT

Subparagraphs 1.a – 1.p: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant’s request for security clearance eligibility is granted.

MATTHEW E. MALONE
Administrative Judge