



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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) ISCR Case No. 23-00631
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

01/04/2024

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his record of criminal conduct, his deliberate false statements to an investigator, and his multiple delinquent or past-due debts. His request for eligibility for access to classified information is denied.

Statement of the Case

On September 14, 2022, 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 Defense Counterintelligence and Security Agency (DCSA) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.

On May 2, 2023, the DCSA issued and sent to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline J (Criminal

Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by 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 August 17, 2023. The FORM proffered 13 exhibits (Items 1 – 13) on which the Government relied 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 respond to the FORM, and he did not file any objections to the Government's exhibits within the allotted time. Accordingly, GX 1 – 13 became part of the record, which closed on September 20, 2023. I received the case for decision on November 15, 2023.

Findings of Fact

Under Guideline J, the SOR alleged that in August 2020, Applicant was charged in State A with felony malicious wounding, felony use of a firearm in the commission of a felony, misdemeanor brandishing of a firearm, and misdemeanor assault and battery on a family member. Further, it was alleged that in March 2022, he was arrested in State B and extradited to State A, where he pleaded guilty to the two misdemeanor charges and was sentenced to 12 months in jail with 10 months suspended (SOR 1.a).

Also under Guideline J, the SOR alleged that Applicant was incarcerated in State C between December 2007 and November 2009 for multiple burglary offenses (SOR 1.b); that in November 2002, he was arrested in State C and charged with burglary and a parole violation (SOR 1.c); that in November 2001, he was arrested and charged in State C with felony burglary, resisting and officer, and simple battery (SOR 1.d); that in February 2001, he was arrested and charged in State C with felony forcible rape, to which he pleaded guilty and served six months in jail (SOR 1.e); and that between 1989 and 2000, he was arrested and charged on multiple occasions with various crimes, including burglary, theft, and forgery (SOR 1.f). In response to the SOR, Applicant admitted each of these allegations and provided a lengthy explanation of the events addressed in SOR 1.a. (FORM, Items 1 and 3)

Under Guideline E, the SOR alleged that Applicant intentionally made false official statements to a government investigator during a November 21, 2022, personal subject interview (PSI) regarding the events addressed in SOR 1.a (SOR 2.a). He admitted this allegation with an explanation, a plain reading of which indicates he reaffirms his statement to the investigator. Accordingly, I have interpreted his response as a denial of the requisite intent to falsify. (FORM, Items 1 and 3)

Under Guideline F, the SOR alleges that Applicant owes \$15,754 for 11 delinquent or past-due debts. (SOR 3.a – 3.k) In response, he admitted each of those allegations and claimed he has paid the debts at SOR 3.a and 3.k, and that he is resolving the debts at SOR 3.d and 3.g. (FORM, Items 1 and 3)

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 53 years old. He is being sponsored for a clearance by a defense contractor in State B, where he has lived since October 2021. He was born in State C in 1970. State and federal criminal records obtained during Applicant's background investigation show that since early 1989, when he was 18 years old, he has been arrested and charged more than 30 times with various criminal offenses, including burglary, assault, use of a weapon in the commission of a felony, forgery, trespassing, and forcible rape. It further appears that he has been incarcerated for criminal offenses for periods ranging from two months to almost two years. The Government's information supports the allegations of multiple criminal charges presented in SOR 1.a – 1.f. (FORM, Items 1, 3, 5 – 9)

Applicant's most recent arrest arose from his conduct in August 2020 in State A. He assaulted his former girlfriend by hitting her in the head with a handgun. He did so after becoming angry when she told him she was seeing someone else, even though they had parted ways eight months earlier. A photo included in the police report compiled on the night of that incident shows the victim with blood on her face and shirt. A responding police officer observed that there was a gash in the victim's head that would require medical treatment and that the victim appeared concussed. Applicant had left the scene before police arrived and was subsequently determined to be a fugitive. He was arrested in State B in March 2022 and extradited to State A where the two felony charges listed in SOR 1.a were entered as *nolle prosequi*, and he pleaded guilty to the misdemeanor charges. All but two months of a 12-month jail sentence were suspended. (FORM, Items 4 – 7, 9, and 10)

When Applicant listed the August 2020 incident in his e-QIP, he stated only that he was charged with simple assault and battery, and that he was released after he was arrested. He further stated that the victim initiated the incident and that he was arrested "because she was a female and she started it." During his PSI with a government investigator, Applicant discussed this event and characterized it as a "cat fight" in which the victim started slapping him, so he slapped her back. He claimed that he only accidentally scratched her in the process and may have drawn a little blood. In his response to SOR 1.a, he repeated this version of events. (FORM, Items 3 – 5)

The Government's information and Applicant's SOR admissions support the allegations under Guideline F. Applicant did not list any adverse financial information as required by e-QIP Section 26 (Financial Record). Nonetheless, he admits the allegations that he owes the debts listed in SOR 3.a – 3.k. In his PSI, he stated that he started experiencing financial difficulties in about July 2020 after a contract he was on ended. In response to the SOR, he claimed he had paid the debt at SOR 3.a. Information included

with his response to DOHA interrogatories coupled with a recent credit report provided by Department Counsel supports his claim of payment. However, he also claimed to have paid the debt at SOR 3.k and that he was resolving SOR 3.d and 3.g. He did not provide information that supports those claims or that indicates the current state of his personal finances. (FORM, Items 3, 5, 11 – 13)

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

Criminal Conduct

Available information shows that Applicant has engaged in persistent, and at times, violent criminal conduct for most of his adult life. For his offenses, he has been incarcerated on multiple occasions. This information reasonably raises the security concern addressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

More specifically, the following AG ¶ 31 disqualifying conditions must be applied here:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I also have considered the mitigating conditions listed under AG ¶ 32:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

None of these mitigating conditions apply here. This record reflects a lifetime of criminal conduct without any evidence of rehabilitation. To the contrary, his patently false version of events in his most recent arrest undermines any sense that he has taken

responsibility for his conduct. Applicant failed to meet his burden of producing reliable information that would refute or mitigate the security concerns raised by the Government's information.

Personal Conduct

During Applicant's PSI in November 2020, he presented a version of the events that transpired in August 2020 that bears no resemblance to the information contained in the police report and photographs compiled on the night they occurred. He also minimized his disclosure of that conduct in his e-QIP and in his response to SOR 1.a. I find that all of the available information probative of his intent in making his statements during the PSI shows that he did so deliberately and with the purpose of misleading the government about his conduct. This information raises the security concern about Applicant's judgment, reliability, and trustworthiness stated at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

More specifically, available information requires application of the disqualifying condition at AG ¶ 16(b):

deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

I also have considered the following pertinent AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

The record does not support either of these mitigating conditions. Applicant did not promptly correct his false statements to the investigator. Rather, as noted above, he repeated his version of events when he responded to the SOR. His claims that he somehow acted in self-defense after the victim slapped him during a “cat fight,” when compared to a contemporaneous police report and photos of the victim, are simply not believable. His willingness to stick with that story in response to the SOR further demonstrates his intent to mislead the government. The security concerns raised under this guideline remain unresolved.

Financial Considerations

Available information shows that Applicant accrued 11 delinquent debts totaling in excess of \$15,000. He has resolved one of those debts. His claims of payment or resolution efforts for his remaining debts are unsupported. This information 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.

Additionally, 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.

Available information establishes that the debt at SOR 3.a has been resolved; however, there is no other information in this record that would support application of any 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;

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

Applicant's financial problems are recent insofar as most of his delinquent debts remain unresolved. While his financial problems may have resulted from a loss of employment income, he did not establish that he acted responsibly in the face of those circumstances. There is no indication that he has received financial counseling, and aside from resolution of the debt at SOR 3.a, there is no documentation of any good-faith repayment effort by Applicant. On balance, Applicant has not mitigated the security concerns about his financial problems.

In addition to my evaluation of the facts and my application of the appropriate adjudicative factors under Guidelines J, E, and F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant did not provide any reliable information that would counterbalance the security concerns raised by his extensive and varied record of criminal conduct, his willingness to misrepresent his most recent offenses, and his ongoing financial problems. Accordingly, significant doubts about his judgment and suitability for clearance persist. 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 J:	AGAINST APPLICANT
Subparagraphs 1.a - 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b – 3.k:	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