



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



In the matter of:)
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 [NAME REDACTED]) ISCR Case No. 15-03832
)
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 Applicant for Security Clearance)

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not intentionally omit adverse information from his security clearance application. But he failed to mitigate the security concerns raised by his failure to take any action to pay or otherwise resolve his delinquent credit card debt. His request for a security clearance is denied.

Statement of the Case

On July 10, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his work as a defense contractor employee. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine that it is clearly consistent with the national interest for Applicant to continue to hold a security clearance.¹

On December 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F) and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a hearing. With his Answer, he provided copies of recent credit reports and of work-related licenses he holds. The case was assigned to me on March 24, 2016, and I convened a hearing on April 26, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified but submitted no additional documents. A transcript of the hearing (Tr.) was received on May 4, 2016.

Findings of Fact

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant owed \$26,999 for a delinquent credit card account that had been transferred to a collection agency. (SOR 1.a) Under Guideline E, it was alleged that Applicant intentionally made a false official statement to the Government when he omitted from his EQIP the debt alleged at SOR 1.a. (SOR 2.a) Applicant admitted SOR 1.a. In response to SOR 2.a, Applicant admitted he failed to list the debt on his EQIP, but he denied that he intended to make a false statement or mislead the Government by doing so. In addition to the facts established by these exhibits and by Applicant's admissions, I make the following findings of fact.

Applicant is 64 years old and works for a defense contractor as a water utilities and maintenance technician. Applicant was hired for that position in September 2013. From April 2008 until September 2013, he worked as a state maintenance worker and as a welder for a private company. (Gx. 1)

After working in the construction industry until about 2005, Applicant started working in real estate sales. His wife, to whom he has been married since December 1989, had already been working in that profession and the market was prospering. A few years after he started in real estate, the market collapsed, and he and his wife lost much of their income. Additionally, around 2010, his wife started experiencing severe back pain that required extensive medical care and pain management. She generally has been unable to work since then. Applicant has not worked in real estate since 2013, and they have additional expenses for medical co-pays and prescriptions. Further impacting their finances was the need for them to financially assist Applicant's stepson,

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ A list of the Government's exhibits is included as Hearing Exhibit (Hx.) 2

and his stepson's wife and child for several years until both his stepson and his stepson's wife died. Applicant and his wife have had custody of their grandchild, now age 16, for over 14 years. (Answer; Gx. 1; Tr. 28 - 29, 31 - 36)

Applicant's wife has always handled the couple's finances. When their income fell, it became difficult to meet everyday expenses as well as his wife's medical expenses. Unbeknownst to Applicant, she started using, as an approved user, Applicant's credit card with Bank A to pay for things like food, gas and other routine items they used to be able to buy outright. Applicant did not know the account was delinquent until he was interviewed by a Government investigator in August 2014. Applicant does not deny the debt, but based on his credit reports, asserts that the actual debt is \$17,663, with the difference consisting of interest and fees assigned by the collection agency. The account has been delinquent since 2009. (Answer; Gx. 2 - 4; Tr. 28 - 30, 36)

Applicant has spoken to Bank B, who bought Bank A a few years ago and took over Applicant's debt. Applicant has a loan in good standing with Bank B and was unable to obtain any information about the delinquent credit card account. However, during the interview Applicant was informed that the debt had been referred to a collection agency. Information about the collection agency was also contained in Gx. 2 and 3, which were provided to Applicant before the hearing. One of the credit reports submitted by Applicant with his Answer also lists the collection agency and provides a phone number to call for information. Rather than call the collection agency to inquire about his debt, Applicant chose to be satisfied with the response he received from Bank B. (Answer; Gx. 2 - 4; Tr. 38 - 39, 44 - 46)

Applicant and his wife live within their means and have accrued no new unpaid debts. Their house and car are paid for, and they meet all of the current regular obligations. Although Applicant has money left over each month after expenses, he has not used any of that money to pay his credit card debt; rather, his wife still has medical expenses that are not covered by insurance. (Tr. 39 - 42)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) 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

⁴ See Directive. 6.3.

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 interest⁵ for an applicant to either receive or continue to have access to classified information. 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.⁶ 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.⁷

Analysis

Financial Considerations

Available information is sufficient to support SOR 1.a, and reasonably raise a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

Failure or inability 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

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's credit card account has been delinquent since 2009. He became aware of its overdue status after his investigation interview two years ago. The account has not been paid or otherwise resolved. These facts require application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

I have also 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Although Applicant's credit card account was overused and became delinquent almost seven years ago without his knowledge, AG ¶¶ 20(a) and 20(b) do not apply. The debt is recent, in that, it is still unresolved, and Applicant has not made any real effort to address the problem. He is not expected to have repaid the debt or to be debt free; however, he knew the debt was no longer with Banks A or B, and he had enough information with which to at least contact the collection agency that bought the debt from the banks. Yet he chose to not contact the collection agency. This does not constitute responsible action under the circumstances.

As to AG ¶¶ 20(c) - (d), Applicant did not present any information to support application of those mitigating conditions. On balance, Applicant did not mitigate the security concerns about his finances.

Personal Conduct

The Government alleged that Applicant's omission of his SOR 1.a debt was an intentional false statement made to mislead or deceive the Government about information relevant and material to its assessment of his suitability for a clearance. Such conduct would reasonably raise a security concern that is expressed 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In this case, the sole disqualifying condition pertinent to these facts and circumstances is AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Because Applicant denied he had the requisite intent to mislead the Government by his omission, the burden of proof remained with the Government. Applicant was credible in his assertion that he did not know the debt was delinquent until he was interviewed a month after submitting his EQIP. The Government relied on the omission itself and did not otherwise present information to show Applicant knew about the debt when he submitted the EQIP, and that he deliberately tried to conceal it. I conclude that the record as a whole does not support application of AG ¶¶ 15 or 16(a).

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant and his wife have encountered significant personal and financial challenges. However, to overcome the security concerns about Applicant's finances, he had to show that he was making some effort to address his debt in a constructive way. That did not occur in this case. As a result, doubts remain about his suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, any lingering doubts must be resolved against 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: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a: For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge