



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-00198
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Applicant for Security Clearance)

Appearances

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

10/19/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not provide sufficient information in response to the Government's case to overcome the security concerns raised by his financial problems and by his intentional falsification of answers to questions in his security clearance application. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On December 6, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as part of his employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly

consistent with the interests of national security for Applicant to have access to classified information.¹

On January 31, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).² Applicant timely responded to the SOR (Answer) and requested a decision without a hearing.

On May 21, 2018, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on June 13, 2018, and he was informed he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.⁴ The record closed on July 28, 2018, after Applicant did not respond to the FORM. I received this case for decision on October 11, 2018.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$236,435 for 13 delinquent or past-due debts (SOR 1.a – 1.m). The \$228,582 delinquent mortgage alleged at SOR 1.i comprises about 96 percent of the total debt at issue. Under Guideline E, it was alleged that Applicant deliberately made false official statements when he omitted from his e-QIP the debts alleged at SOR 1.a – 1.m (SOR 2.a). Applicant admitted, without explanations, all of the SOR allegations. (FORM, Items 1 and 2)

All of the SOR allegations are supported by Applicant's admissions to the SOR; by his responses to questions in his e-QIP; by the summaries of three personal subject interviews (PSI); and by the contents of two credit reports obtained during his background investigation. (FORM, Items 2 – 8) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor, for whom he has worked since July 2016. He previously worked for another defense contractor between October 2011 and July 2016. Applicant served in the U.S. Army from September 1999 until May 2011, when he was honorably discharged. He first received a security clearance in 1999, and, including the current background investigation, he has been re-investigated for clearance eligibility three times. (FORM, Items 2 and 3)

During Applicant's previous background investigation, he completed a PSI with a government investigator on November 21, 2011. During the interview, Applicant

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

² See Directive, Enclosure 2.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on eight enclosed exhibits (Items 1 – 8).

⁴ See Directive, Section E3.1.7.

discussed a number of topics, including his financial problems and his proposed efforts to pay his delinquent debts. Applicant also discussed the fact that he had not disclosed many of those debts in his security clearance application. On November 27, 2012, based on the results of that PSI and the rest of that background investigation, the DOD CAF issued to Applicant a set of interrogatories about his finances. Applicant was asked for information about several debts, including those listed in the SOR in this case at SOR 1.a, 1.d, 1.j, and 1.k. Applicant told the investigator that he was living paycheck to paycheck, but that he was going to work overseas and would use the extra income from that job to pay his debts. In his January 4, 2013, response to the DOD CAF interrogatories, Applicant also provided a personal financial statement (PFS). The PFS showed that Applicant had a negative monthly cash flow of \$1,034. (FORM, Item 4)

When Applicant submitted his most recent e-QIP, he answered “no” to all questions in Section 26 (Financial Record) and did not list any of the debts reflected in the credit reports obtained by investigators or addressed in the SOR. Instead, he stated that he was “currently going over [his] credit report to fix any issues and to see if there is any outstanding issue that that need (sic) to be dealt with.” During a PSI on May 22, 2017, Applicant again was presented with adverse financial information not disclosed in his e-QIP. He explained that he did not list his debts because he did not know all of the details about his debts at the time he submitted his e-QIP. (FORM, Item 5)

During his May 2017 PSI, Applicant and the investigator discussed the details of each delinquent or past-due account reflected in a February 28, 2017, credit report. Applicant indicated that he would resolve each debt within the next six months. In response to the SOR and the FORM, Applicant did not avail himself of his opportunities to provide information about any actions he has taken to resolve his financial problems. Nor has he provided any information about the current state of his personal finances. (FORM, Items 5 and 6)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new 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.

⁵ See Directive, 6.3.

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 interest⁶ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information. A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.⁹

Analysis

Financial Considerations

This record reasonably raises the security concern expressed 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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

security concern insofar as it may result from criminal activity, including espionage.

More specifically, this record requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). By contrast, none of the information presented in this record supports application of any of the pertinent AG ¶ 20 mitigating conditions. Applicant's financial problems have persisted for most of the past eight years. They are recent, because none of the debts alleged in the SOR have been resolved. Despite previously being interviewed and queried about his debts on multiple occasions, Applicant has not presented any information to show he has tried to pay his debts or otherwise improve his personal finances. The security concerns raised by the adverse information about Applicant's finances are not mitigated.

Personal Conduct

The security concern under this guideline is 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.

In December 2016, Applicant answered "no" to all questions in Section 26 of the e-QIP he submitted to renew his eligibility for a security clearance. In some cases, Applicant's statement therein that he was reviewing his credit report to fix any outstanding financial problems might be construed as notice that he had outstanding debts. This is not one of those cases. Applicant has submitted such applications in the past, and as recently as 2012, he was made aware of the security concerns about his finances during a PSI and through DOD CAF interrogatories. Prior experience notwithstanding, during the current adjudication of his eligibility, he has decided to be evasive and untruthful about his debts. My review of all of the available information probative of his intent when he completed his e-QIP leads me to conclude that he deliberately provided false information

in his e-QIP. The debts alleged include a mortgage foreclosure and four debts discussed in the earlier investigation. He knew or should have known that given his circumstances, he should at least have answered “yes” to one or more of the e-QIP Section 26 questions. This information requires application of the disqualifying condition at 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

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;

(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; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

This record does not support application of any of these mitigating conditions. Further, there is nothing minor about Applicant’s willingness, over the course of his last two background investigations, to provide false and misleading answers to fundamental and reasonable questions from the government. In response to the SOR and the FORM, Applicant did not present any information that shows why his omissions should not cast doubt on his judgment, reliability and trustworthiness. The security concerns under this guideline are not mitigated.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines E and F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). My review of all of the available information leaves unanswered the doubts about Applicant’s suitability for access to classified information that were raised by his financial problems and by his intentional omissions of information from his application. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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