



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 18-00256

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2018

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 April 27, 2017, 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 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

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

On March 8, 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 23, 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 1, 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 1, 2018, after Applicant did not respond to the FORM. I received this case for decision on September 19, 2018.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$22,760 for ten delinquent or past-due debts (SOR 1.a – 1.j). Applicant denied SOR 1.f, but admitted the remaining Guideline F allegations. The largest debts alleged are at SOR 1.a (\$10,400 for a car repossession in 2012) and SOR 1.j (\$7,863 for a state tax lien entered in September 2016). (FORM, Items 1 and 2)

Under Guideline E, the Government alleged that Applicant deliberately gave false answers to questions in e-QIP Section 26 (Financial) when he omitted the state tax lien addressed in SOR 1.f (SOR 2.a); and when he did not list any of the delinquent debts listed in SOR 1.a – 1.j (SOR 2.b). Applicant denied SOR 2.a and admitted SOR 2.b. With his Answer, Applicant provided a one-page explanatory statement and a single-page letter, dated April 16, 2018, from the state tax authority holding the lien addressed in SOR 1.j.

The SOR allegations are supported by Applicant's admissions to the SOR, by the contents of two credit reports obtained during his background investigation, and by the summary of a personal subject interview (PSI) Applicant had with a government investigator in August 2017. (FORM, Items 2 – 6) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 59-year-old employee of a defense contractor, for whom he has worked since March 2017. He and his wife have been married since December 1990. A previous marriage in March 1979 ended by divorce in October 1989. Applicant served in the U.S. Army from July 1986 until August 1990, and from January 1991 until retiring in

² See Directive, Enclosure 2.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on six enclosed exhibits (Items 1 – 6).

⁴ See Directive, Section E3.1.7.

January 2011. He held a security clearance throughout his military career. (FORM, Items 2 and 3)

Applicant attributes his financial problems to the loss of his wife's income while they both cared for her father for several years before he died from Alzheimer's disease. The burden of his father-in-law's care also brought on medical issues for Applicant's wife. The debts alleged at SOR 1.g – 1.i are for unpaid medical accounts. Applicant was not aware of these debts when he submitted his e-QIP because his wife was handling those bills. (FORM, Items 2 and 4)

Applicant incurred the \$10,400 debt alleged at SOR 1.a in 2012 when he returned a car he had purchased in 2010 for \$21,500. By 2012, he could no longer afford to make the required purchase loan payments. Applicant was notified in 2012 that he owed a remaining deficiency of \$5,200. In his August 2017 PSI, Applicant claimed he was making \$100 monthly payments and that the remaining balance due was about \$2,000. He has not documented this claim, and the outstanding debt of \$10,400 is still reflected in a January 2018 credit report. He did not list the debt in his e-QIP because he believed he was current in his repayment efforts. (FORM, Items 4 and 6)

The \$1,040 debt alleged at SOR 1.c is for a delinquent personal loan obtained in July 2015. Applicant fell behind on this loan in November 2016, around the time he moved from State A to his current residence in State B. At his August 2017 PSI, he claimed he has been making \$50 payments since early 2017. He did not corroborate his claim with any additional documents, and he did not list the debt in his e-QIP because it was not more than 120 days past due at the time. A January 2018 credit report now lists the debt as more than 180 days past due. (FORM, Items 4 and 6)

The \$951 debt at SOR 1.d is for a delinquent cell phone account. Applicant opened the account in 2010, but in 2015 closed it early and incurred an early termination penalty. Applicant acknowledged receiving a collection notice about this account. It is still unresolved. (FORM, Items 4 – 6)

The \$332 debt alleged at SOR 1.f is for a past-due credit card account Applicant opened for his daughter in 2012. He is listed as an authorized user of the card, and he stated in his PSI that he would contact his daughter to resolve the delinquency. As of January 2018, the account was still listed as delinquent. (FORM, Items 4 – 6)

Applicant moved from State A to his current residence in State B in October 2016. In September 2016, State A perfected a lien against Applicant for unpaid property taxes for 2015 totaling \$7,863. Applicant claimed he has been making monthly payments since September 2016. In support of his claim, he provided information with his Answer showing the balance owed was \$3,522.21, pending another payment on April 30, 2018. Applicant did not list this debt in his e-QIP because he has been making payments. He acknowledged in his PSI that he should have listed the debt. Applicant did not provide any record of payments made, but the referenced payment amount is \$250. Assuming those payments were made as claimed over the 18 months between September 2016 and March 2018, the total paid would have been about \$4,500. (FORM, Items 2 – 4)

When he was interviewed in August 2017, Applicant described his financial health as “poor but improving.” His wife’s health has improved since 2015 and he is better off financially since being hired for his current job in early 2017. Applicant did not provide any specific information about his finances (i.e., budget, income, expenses, savings, etc.) and he has not sought any financial counseling or other assistance to resolve his debts, which remain mostly unresolved.

When Applicant completed his e-QIP, he answered “no” to all of the questions in Section 26 (Financial Record). By doing so, he omitted all of the debts alleged in SOR 1. He did not disclose the state tax lien against him on which he then had been paying for about seven months. He also did not disclose his actual failure to pay the state taxes that are the subject of the lien. As to his other debts, Applicant may not have been fully aware of the medical debts for his wife’s care because she was handling those bills. Nonetheless, at the very least, he was aware when he completed the e-QIP that he owed a deficiency for a car repossession and that he had a delinquent cellphone account. In discussing these items with the government investigator, he initially reaffirmed his e-QIP answers before being confronted with the contents of a June 2017 credit report. During the interview, Applicant also claimed that he had been making payments on most of those accounts. (FORM, Items 3 and 4)

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.

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

⁵ See Directive, 6.3.

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

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 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*).

In response, Applicant claimed that his financial problems arose from circumstances beyond his control, thus invoking the mitigating condition at AG ¶ 20(b):

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

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.

This mitigating condition is not available to Applicant because he did not establish that he acted responsibly in the face of the circumstances he cites. The information he provided about the outstanding state property tax lien supports his claim he has been making monthly payments on that debt. Nonetheless, he did not support his other claims of payment as it was incumbent on him to do. The information about those debts contained in the Government's information remains unchanged. Applicant was advised in the FORM that he had another opportunity to provide information in support of his claims, but he did not present anything new.

Available information does not support any of the other pertinent mitigating conditions under this guideline. Applicant's financial problems are current because his debts remain unresolved. As noted, there is little information from which to conclude that he has been making a good-faith effort to pay his debts. Applicant did not present any detailed information that shows his current finances are sound, and he has not sought any assistance or counseling to resolve his debts. I find that Applicant has not mitigated the security concerns raised by the Government's information about his finances.

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.

Applicant denies that he intentionally omitted his tax lien and tax debt from his e-QIP. He admitted intentionally omitting his other debts from his e-QIP. 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. 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.

At the very least, Applicant knew of his tax lien, his car repossession debt, and his cell phone account debt. He acknowledged being contacted at or near the time those debts accrued, and he claimed he had been making payments on those debts for some period of time before he completed his e-QIP. This was not Applicant's first experience with applying for a clearance and responding to questions about his background, as he held a clearance for most of his military career. 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.

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.

None of these mitigating conditions apply. Rather than correct his omissions, it was not until he was confronted with information about those debts during his August 2017 PSI that he acknowledged the debts. Applicant did not establish that he received or sought any guidance that may have caused him to provide inaccurate information. Finally, there is nothing minor about Applicant's willingness 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). Applicant's information did not resolve the doubts about his suitability for access to classified information that were raised by his financial problems or 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.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	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