



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 14-04939
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Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

12/03/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial problems and by his decision to provide false answers in his security clearance application. His request for a security clearance is denied.

Statement of the Case

On August 31, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for his employment with a defense contractor. Based on the results of the ensuing background investigation, which included Applicant's responses to interrogatories¹ from

¹ Authorized by DOD Directive 5220.6, as amended (Directive), E3.1.2.2.

adjudicators for the Department of Defense (DOD), it could not be determined that it is clearly consistent with the national interest for Applicant to continue to hold a security clearance.²

On February 27, 2015, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines³ for personal conduct (Guideline E) and financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and forwarded attached thereto several documents included in the record without objection. (Tr. 17 - 18) Applicant requested a hearing, and the case was assigned to another administrative judge on July 1, 2015. It was transferred to me on September 15, 2015, and I convened a hearing on September 17, 2015. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 12.⁴ Applicant testified and presented Applicant's Exhibit (Ax.) A. All exhibits were admitted without objection. A transcript of the hearing (Tr.) was received on September 25, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant filed a Chapter 13 bankruptcy petition in July 2007 that was dismissed in August 2007 (SOR 1.a); that he filed another Chapter 13 petition in April 2008 that was dismissed in June 2008 (SOR 1.b); that he filed a Chapter 13 petition in November 2007 that was dismissed in February 2008 (SOR 1.e); and that he owed \$32,998 for 14 delinquent or past-due debts (SOR 1.c, 1.d, 1.f - 1.q). At hearing, Department Counsel withdrew the allegations at SOR 1.o and 1.p. (Tr. 8) Under Guideline E, the Government alleged that Applicant made false official statements to the Government by deliberately omitting his debts and bankruptcy filings from Section 26 (Financial Record) of his EQIP (SOR 2.a).

In response to the SOR, Applicant admitted, with explanations, all of the Guideline F allegations. He denied SOR 2.a. (Answer; Tr. 11 - 14) In addition to the facts established through Applicant's admissions, I make the following findings of fact.

Applicant is a 50-year-old employee of a defense contractor, for whom he works as a remote field technician. From about 1991 until 2006, Applicant worked in a similar job for a national telecommunications company. He was laid off when the company declared bankruptcy and reorganized as part of a merger with another company in that field. Unable to find similar work, Applicant started his own trucking and hauling company. Unfortunately, that business venture failed with the economic recession.

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

³ 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).

⁴ The list of Government's exhibits is included in the record as Hearing Exhibit (Hx.) 1.

Applicant was unemployed from late 2007 until he was hired for his current job in December 2010. (Gx. 1; Gx. 6; Tr. 43)

Applicant and his wife have been married since August 2010; however, they recently separated. Applicant has one child, now age 26. (Gx. 1; Tr. 52)

In July 2007, Applicant filed for Chapter 13 bankruptcy protection because he was in danger of losing his home to foreclosure. The petition was dismissed in August 2007 because his attorney missed certain filing deadlines. The petition was re-filed in November 2007 but dismissed for similar reasons in February 2008, and was filed a third time in April 2008. The petition was again dismissed, this time at Applicant's request. Applicant's attorney was later disbarred and has since passed away. Applicant eventually lost his home to foreclosure. (Answer; Gx. 2 - 4; Gx. 6 - 12; Tr. 21- 22, 45, 106)

For Applicant's trucking business, he owned five dump trucks used for hauling services in and around the large metropolitan area where he was doing business. The debts alleged at SOR 1.f - 1.l are for unpaid parking tickets incurred by his truck drivers in the course of their work. In response to the SOR, and at the hearing, Applicant established that, as of March 2015, he had paid or is close to paying each of those debts. (Answer; Gx. 2 - 4; Gx. 6; Tr. 44, 47 - 48, 67)

The debts alleged at SOR 1.d and 1.q are for unpaid homeowners association (HOA) fees related to Applicant's ownership of a condo he bought as a rental property. Applicant at one time owned as many as five properties, but now owns only the property at issue in SOR 1.d. However, that property has been unoccupied for about three years. Applicant insists he is able to cover all costs associated with the property while currently repaying the SOR 1.d debt at a rate of \$1,000 each month. (Answer; Gx. 2 - 6; Ax. A; Tr. 46, 65 - 69, 99 - 100)

When Applicant was first hired for his current job, he applied for and was granted eligibility for an ADP trustworthiness position so that he could access sensitive, but unclassified, information. He filled out an SF 85 application, which is similar to the EQIP he submitted as a clearance application. Applicant already was familiar with the questions and topics of inquiry when he completed his EQIP. He did not disclose therein any of the adverse financial information in his background. Applicant was later interviewed about his finances by a Government investigator. The investigator asked him about his negative answers to the EQIP financial questions and Applicant confirmed his answers. The investigator then confronted Applicant with information in a 2012 credit report about his Chapter 13 bankruptcy and his past-due and delinquent debts. Applicant then provided information about the causes of his financial problems and the corrective measures he had taken or intended to take. At hearing, Applicant reiterated his denial of intentionally falsifying his EQIP. He explained his omissions occurred because he either forgot about his debts, or that errors occurred because his wife helped him complete the EQIP, he was not careful with his answers, or that he did not

pay close enough attention to the questions because of personal turmoil in his life at the time. (Answer; Gx. 1; Gx. 6; Tr. 74 - 78, 81, 83 - 93)

Applicant testified that he earns about \$3,200 each month after taxes and other deductions, plus about \$1,000 each month in work-related mileage expenses. Applicant travels almost every week for his work. In response to a request for more detailed information about his finances in interrogatories sent by DOD adjudicators, Applicant declined to complete a personal financial statement (PFS). At his hearing, he referred vaguely to other sources of income from mechanical and other work he performs outside of his DOD-related work. Applicant also disclosed that he is repaying income tax debts from his failure to file state and federal income tax returns between ten and fifteen years ago. He characterized his monthly financial status as “breaking even.” (Gx. 6; Tr. 93 - 105)

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 (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 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 access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or

⁵ See Directive. 6.3.

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

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.⁷

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.⁸

Analysis

Financial Considerations

Available information is sufficient to support the SOR allegations under this guideline. The facts established 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 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.

More specifically, this record supports 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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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; and

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

Applicant started experiencing financial problems around 2006 when he was laid off from a telecommunications job he had held for about 15 years. His small trucking business failed a few years later because of reduced demand for services during the economic recession after 2007. Applicant had other sources of income that was insufficient to cover his expenses and he unsuccessfully tried filing bankruptcy to save his home from foreclosure. It was not until 2010, when he was hired for his current job that he started earning steady, significant income. Although it appears he has recently repaid or otherwise resolved most of the debts alleged in the SOR, I remain concerned by his failure to show that his current finances will remain sound. For example, Applicant still has one rental property that has not produced income in three years. Applicant also is still repaying income tax debts along with civil judgments for unpaid HOA fees. Based on the financial information he provided in his testimony, it appears that he is still struggling to make ends meet each month.

Although he has taken action to resolve his debts, that action has only taken place after issuance of the SOR. Applicant claimed that he has been hampered by the need to resolve tax debts, not alleged in the SOR. However, he did not produce any explanatory information or provide, in his response to interrogatories, any information that would give the Government a better understanding of his current monthly finances. Based on all of the foregoing, I conclude that none of the pertinent mitigating conditions under this guideline apply. Applicant failed to meet his burden of persuasion in response to the Government's information about his finances.

Personal Conduct

Applicant did not disclose in his EQIP any of the adverse financial information alleged under Guideline F. Although he denies doing so intentionally, I conclude from all of the available information probative of his intent in this regard that he knowingly and wilfully withheld this information from his EQIP. Accordingly, a security concern arises about Applicant's personal conduct. It is articulated at AG ¶ 15, as follows:

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.

More specifically, the disqualifying condition at AG ¶ 16(a) applies here:

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.

I have also 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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. 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.

Applicant did not provide information sufficient to support application of any of these mitigating conditions. Moreover, I did not find his testimony about why he omitted information from his EQIP to be credible. Two years before completing his EQIP, Applicant completed a position of trust application. He knew or should have know what was required of him in submitting his clearance application, yet he did not disclose his bankruptcy, civil judgments against him, or any of the other debts attributable to him. Additionally, he compounded his deception by initially confirming those same false answers when he met with a Government investigator. Applicant never tried to correct his false statements, and the record evidence as a whole precludes application of any of the mitigating conditions under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant did not submit any relevant information in this regard, and his lack of candor about his finances leaves me with doubts about his suitability for access to classified information. 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 F:	AGAINST APPLICANT
Subparagraph 1.a - 1.n, 1.q:	Against Applicant
Subparagraphs 1.o - 1.p:	Withdrawn
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against 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