



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



In the matter of:)	
)	
)	ADP Case No. 06-26383
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

February 26, 2010

Decision

CREAN, THOMAS M., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF 85P), on March 25, 2005, as part of his employment with a defense contractor. On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns for financial considerations under Guideline F. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 8, 2009. He admitted seven and denied nine of the sixteen factual allegations. Applicant provided a detailed response to the SOR on September 14, 2009, admitting and denying the same factual allegations. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 17, 2009, and the case was assigned to me the next day. DOHA issued a Notice of Hearing on November 20, 2009, for a hearing on December 8, 2009. I convened the hearing as scheduled. The government offered six exhibits, marked Government Exhibits (Gov. Ex.) 1 through 6, which were admitted

without objection. Applicant submitted eight exhibits, marked Applicant Exhibits (App. Ex.) A through H, which were admitted without objection. Applicant testified on his behalf. I left the record open until December 29, 2009, for Applicant to submit additional documents. No documents were submitted. DOHA received the transcript (Tr.) of the hearing on December 22, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

Procedural Issues

Applicant stated at the hearing that he received the Notice of Hearing on or about December 3, 2009, five days prior to the hearing. However, Applicant dated his receipt of the Notice of Hearing December 14, 2009, six days after the hearing. Applicant is entitled to 15 days advance notice of the hearing (Directive ¶ E3.1.8). Applicant discussed with Department Counsel the hearing date of December 8, 2009, prior to the Notice of Hearing being mailed so actual notice was given more than 15 days prior to the hearing. At the hearing, Applicant waived the 15 days advance notice requirement (Tr. 5-7).

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted seven and denied nine of the sixteen factual allegations in the SOR. His admissions are included in my findings of fact.

Applicant is 30 years old, and has been a network operator and systems administrator with a defense contractor for over five years. He has received certificates of training in several network and security operations, to include network operations (App. Ex. A, Certificate, dated August 10, 2007); security (App. Ex. B, dated July 21, 2007); IT Technician (App. Ex. C, dated May 2, 2007; and Microsoft Professional (App. Ex. D, Microsoft, undated). He is not married. However, he lives with a girlfriend and they share living expenses. His monthly pay is \$2,200 and her monthly salary is \$2,500, for a combined \$4,700 in monthly income. Their monthly expenses are about \$4,000, leaving approximately \$700 in monthly discretionary funds (Tr. 66-67; Gov. Ex. 1, SF 85P, dated March 25, 2005).

Credit reports (Gov. Ex. 3, dated July 2, 2005; Gov. Ex. 4, dated March 2, 2007; Gov. Ex. 5, dated April 4, 2008; and Gov. Ex. 6, dated November 16, 2009) listed 16 delinquent debts totaling approximately \$26,000 owed by Applicant. Applicant admitted to seven of the debts totaling \$12,000, and denied nine of the debts totaling \$14,000. The debts date back to 2005. The delinquent debts include an energy bill for \$48 (SOR 1.a); car repossession for \$7,015 (SOR 1.b); another car repossession for \$9,212 (SOR 1.c); a telephone service debt for \$188 (SOR 1.d); another telephone service debt for \$1,046 (SOR 1.e); apartment rent for \$1,265 (SOR 1.f); a pay day loan for \$581 (SOR 1.g); a credit card debt for \$540 (SOR 1.h); a cable service debt for \$557 (SOR 1.i); another utility debt for \$124 (SOR 1.j); a student loan for \$2,206 (SOR 1.k); another energy debt for \$25 (SOR 1.l); a credit card debt for \$1,350 (SOR 1.m); another credit

card debt for \$346 (SOR 1.n); another telephone bill for \$1,076 (SOR 1.o); and a debt to a furniture company for \$710 (SOR 1.p). Since 2007, Applicant's other debts have been paid and are current (Tr. 66).

The delinquent debt at SOR 1.a for \$48 is for an energy debt. The debt has been paid in full (Tr. 18-19; App. Ex. A, letter, date June 12, 2009).

The delinquent debt at SOR 1.b for \$7,015 is from a car repossession. Applicant believes the debt should be only for \$5,000. Applicant co-signed for the debt with his then girlfriend. The girlfriend drove the car and was suppose to make the car payments. She made payments for about 18 months. Applicant learned of the repossession and debt for this car when he received the SOR. He has not made any further payments on the debt. His last discussion with the creditor was in March 2009 (Tr. 19-25).

The delinquent debt at SOR 1.c for \$9,212 is for a car repossession. Applicant purchased the car in 1999. He made payments for about two years until he lost his job. He has not made any further payments or been in contact with the creditor (Tr. 25-27).

The delinquent debt at SOR 1.d for \$188 is for a telephone debt. The debt has been paid in full (Tr. 27-28; App. Ex. F, letter, dated June 12, 2009).

The delinquent debt at SOR 1.e for \$1,046 is for another telephone debt. It has been delinquent since 2002. Applicant stated he disputed the debt with the credit reporting agency and it was removed from his credit report. Applicant was to forward the dispute letter and documents resolving the dispute after the hearing. No documents were received (Tr. 28-33).

The delinquent debt at SOR 1.f for \$1,265 is rent for an apartment Applicant rented before working for the defense contractor. Applicant left the apartment after he and his then girlfriend roommate had a disagreement. The roommate was to finish paying the lease. He does not understand why the debt is for \$1,265 since the rent was only \$700 monthly. Applicant stated he has been making \$100 monthly payments and would forward receipts for these payments after the hearing. No documents were received (Tr. 33-35).

The delinquent debt at SOR 1.g for \$581 is for a pay-day loan. Applicant used the money to visit his mother who was sick. The loan has been paid (Tr. 35-26; App. Ex. G, Paid in full letter, date June 3, 2009).

The delinquent debt at SOR 1.h for \$540 is for a bank account that was over drawn. Applicant paid this debt (Tr. 37; Response to SOR, Letter, dated March 28, 2008).

The delinquent debt at SOR 1.i for \$557 is a cable service debt. Applicant stated he returned the cable equipment. He could not find the receipt, but he sent a dispute letter to the creditor, but did not receive a reply. He does not have a copy of the receipt for the equipment or the dispute letter (Tr. 37-40).

The delinquent debts at SOR 1.j for \$124, and SOR 1.l for \$25, are for utility bills owed to the same utility company. Applicant called the creditor but the debts could not be located. Applicant has not paid either debt. (Tr. 40-47).

The delinquent debt at SOR 1.k for \$2,206 is to a university for school tuition. Applicant does not understand why he has this debt. While attending school, he was receiving student financial aid. Applicant sent a dispute letter to the credit reporting agency, but did not send a letter to the school. He did not receive a reply from his letter. However, the debt is no longer on his credit report (Tr. 47-50).

The delinquent debt at SOR 1.m for \$1,350 is for a credit card Applicant received when he left high school in 1998. Applicant believes the debt should be for only \$700. He has not made any payments on this debt (Tr. 50-54).

The delinquent debt at SOR 1.n for \$346 is for a credit card. Applicant tried to pay the debt from his bank account but provided the wrong account number. The account has not been paid (Tr. 54-56).

The delinquent debt at SOR 1.o for \$1,076 is for a telephone debt to the same creditor listed in SOR 1.e. Applicant believes the debts at SOR 1.e and 1.o are duplicates. However, the debts are for different amounts, have different account numbers, and have different start dates. Neither the debt at SOR 1.e or SOR 1.o has been paid (Tr. 56-64).

The delinquent debt at SOR 1.p for \$710 is for furniture. The debt has been paid in full (Tr. 64-65; App. Ex. H, Letter, dated June 4, 2009).

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” The standard that must be met for assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that “assigning the person to sensitive duties is clearly consistent with the interests of national security.” Trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management (See, The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004). Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust or a sensitive position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.”

The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision (AG ¶ 2(c)).

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion for obtaining a favorable trustworthiness decision.

A person who seeks access to sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

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 sensitive information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a public trust position. An applicant is not required to be debt-free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts, as established by credit reports and Applicant’s statements and testimony, are a security concern raising Financial

Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Applicant has 16 delinquent debts consisting of utility bills, credit cards, telephone service debts, cable service charges, student loans, and pay-day loans that have been delinquent for some time, indicating a history of not meeting financial obligations, as well as an inability or unwillingness to satisfy his debts.

I considered Financial Considerations Mitigating Conditions (FC MC) ¶ 20(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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. Applicant paid in full five of the delinquent accounts mostly in mid 2009 (SOR 1.a, 1.d, 1.g, 1.h, 1.p). Applicant stated he is making payments of \$100 monthly on one debt but he did not provide documentation of payments even though provided the opportunity (SOR 1.f). The remaining debts became delinquent as early as 2002, are still unpaid, and are thus current debts. The debts were incurred in the normal course of life and there were no unusual reasons or reasons beyond his control for the debts. Since the delinquent debts arose in the normal course of living and not for any unusual reasons, the debts could likely recur.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. The concept of good-faith action requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments. An applicant is not required to establish that he paid off each and every debt listed. The entirety of an applicant's financial situation and his actions can reasonably be considered in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. All that is required is that an applicant demonstrates that he has established a plan to resolve his financial problems and has taken significant actions to implement that plan. Applicant has paid five of the debts (SOR 1.a, 1.d, 1.g, 1.h, 1.p). He stated he is making payments on one of the debts, but failed to present proof of payment even though provided the opportunity (SOR 1.f). He has not made contact with or paid five other creditors (SOR 1.b, 1.c, 1.j, 1.n, and 1.o). His payment of five of the debts is some indication of good-faith. However, the majority of his delinquent debts remain unpaid or unaddressed. Applicant failed to establish a meaningful track record of debt payments, and that he acted reasonably, with prudence, honesty, and an adherence to a duty or obligation.

I considered FC MC AG ¶ 20(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 documentation to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue). The mitigating condition does not apply. Applicant stated he disputed four of the debts (SOR 1.e, 1.i, 1.k, and 1.m). He did not provide documentation of his disputes even though he said he was able and provided the opportunity. Based upon the information provided by Applicant, it does not appear he had a reasonable basis for his disputes. His only dispute on one of the debts was the amount of the debt (SOR 1.m).

Applicant stated he believed SOR 1.e and 1.o were duplicates but he presented no documentation to establish the duplication. In fact, from the information available, it appears they are separate debts.

Applicant's lack of action to pay his debts is significant and constitutes credible information to show that he has not acted reasonably under the circumstances. Applicant has not acted responsibly towards his debts and finances under the circumstances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations because he did not establish that the reasons for his debts were beyond his control and that he took reasonable and responsible efforts to manage his finances. His finances indicate a public trust concern.

Whole-Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant is a good employee who has been trained in his field of network operations.

Applicant paid five debts. Applicant has not established a meaningful track record of paying his remaining delinquent debts. He stated he had receipts for payments and letters of disputes, but he did not provide documentation to verify payments or disputes on his other debts. He was provided the opportunity to present verifiable documentation. None was received. He has yet to contact some creditors. Applicant has not provided sufficient credible documentary information to show he acted reasonably and responsibly towards his debts. His failure to act reasonably and responsibly towards his finances indicates he may not act reasonably and responsibly to protect sensitive information. In the future, if Applicant is able to establish a meaningful track record of debt payment and reduction, and provide sufficient credible documentation, he should be afforded the opportunity to establish eligibility for a position of public trust. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from his financial situation.

Formal Findings

Formal findings for or against Applicant 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i - 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

THOMAS M. CREAN
Administrative Judge