



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



In the matter of:)
)
-----) ADP Case No. 17-03637
)
Applicant for Public Trust Position)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2019

Decision

KATAUSKAS, Philip J., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Applicant presented sufficient evidence to mitigate trustworthiness concerns under Guideline F. Eligibility for a public trust position is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 25, 2016. On November 7, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on December 30, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 22, 2018, and the case was assigned to me on July 20, 2018. The Defense Office of Hearings and Appeals (DOHA) sent Applicant a notice of hearing on August 9, 2018,

scheduling the hearing for September 13, 2018. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, but he did not present the testimony of any other witnesses or present any documentary evidence. I kept the record open until September 27, 2018, to enable him to present documentary evidence. He timely submitted Applicant's Exhibits (AE) A, an April 13, 2018 email from a medical creditor, and AE B, a September 24, 2018 email from a creditor, both of which were admitted without objection. DOHA received the transcript (Tr.) on September, 24, 2018.

Findings of Fact

Applicant is a 52-year-old software developer who is seeking a position of public trust with his employer, a federal contractor, where he has worked full time since August 2015. He holds an Associate's degree (in 2008), a Bachelor's degree (in 2014), and is working on his Master's degree. Applicant earned his Associate's degree using the GI Bill and his Bachelor's degree through a Veterans Vocational Rehabilitation Program. Applicant is twice married and twice divorced (1987 to 1996 and 2000 to 2016). He has six children ranging in ages from 14 to 31, none of whom live with him. Applicant pays about \$1,500 per month in child support for the two children who are under age 18.

Applicant served in the U. S. Navy from 1987 to 1991, when he was honorably discharged. In October 2006, he became disabled as a result of service-connected injuries. In about 2008, Social Security (SS) deemed him to be 100% disabled, and Applicant began receiving Social Security disability benefits. The Veterans Administration (VA) deemed him to be 40% disabled. As a result of his disability, Applicant was unemployed from September 2006 until August 2015. The disability, the resulting unemployment, and lack of income caused his 'financial life [to go] into default.' (GE 1; Tr. 11-12, 17, 18-20, 60-61, 77-78, 83, 94.)

SOR alleges 20 delinquent debts totaling \$43,947. The evidence pertaining to the debts alleged in the SOR is summarized below and is gleaned from Applicant's admissions to the SOR, the parties' exhibits, and Applicant's hearing testimony.

SOR ¶ 1.a: electric utility account placed for collection for \$589. Applicant claimed that he paid this account in a lump sum in 2016. He did not have any supporting documentation at the hearing but said he could provide some. Applicant did not provide such documentation post-hearing. (Tr. 21-23.)

SOR ¶ 1.b: cell phone account placed for collection for \$387. Applicant claimed that he paid this account in 2015. He did not have any supporting documentation at the hearing but said he could provide some. Applicant did not provide such documentation post-hearing. (Tr. 23-25.)

SOR ¶ 1.c: medical account placed for collection for \$302. Post-hearing, Applicant submitted documentation showing this account to be paid. (AE A.)

SOR ¶ 1.d: judgment on a credit union account for \$9,422 filed in February 2011. This judgment was paid in March 2017. (Answer; Tr. 27-29.)

SOR ¶ 1.e: judgment on a rental account for \$982 filed in September 2012. Applicant claimed that his ex-wife paid this judgment and that he would try to get supporting documentation from his ex-wife. Applicant did not provide such documentation post-hearing. (Tr. 29-32.)

SOR ¶ 1.f: past-due university account placed for collection for \$968. Applicant incurred this debt in 2011 or 2012. He has not resolved this account but believes that it should have been covered by student loans. Applicant did not provide such documentation post-hearing. (Tr. 32-34, 36-37.)

SOR ¶ 1.g: past-due online university account placed for collection for \$4,210. Applicant will attempt to find documentation that this account should have been covered by student loans. Applicant did not provide such documentation post-hearing. (Tr. 34-37.)

SOR ¶ 1.h: The Government moved to withdraw this allegation as a duplicate of

SOR ¶ 1.d. The motion was granted without objection. (Tr. 85-86.)

SOR ¶ 1.i: The Government moved to withdraw this allegation as a duplicate of

SOR ¶ 1.f. The motion was granted without objection. (Tr. 85-86.)

SOR ¶ 1.j: cell phone collection account place for collection for \$394. This account was paid in December 2017. (Answer; Tr. 39-40.)

SOR ¶ 1.k: account for a purchase of furniture placed in collection for \$1,257. Applicant testified that he made a \$1,000 down payment to the original creditor and monthly payments of about \$100 totaling about \$1,200. He was never given credit for the down payment or the monthly payments. Applicant denied this allegation, because he is in an adversarial process with the original creditor. **SOR ¶ 1.s** is owed to the same collection agency for the same original creditor in an approximately similar amount (\$1,995), although the collection account numbers are different. (GE 4, pp. 13, 19.) Applicant believes that those are duplicate accounts. (Tr. 40-44, 63-65.) The weight of the evidence suggests that they are duplicates.

SOR ¶ 1.l: account for an electric utility placed in collection for \$235. Applicant resolved this account in November 2017. (AE B; Tr. 44-46.)

SOR ¶ 1.m: account for a broken lease placed for collection for \$3,373. At the time, Applicant was having problems with his then wife, and he moved out and made no further payments on the lease. Although he disputed this debt and had it removed from his credit report, Applicant agrees that he still owes that debt and intends to pay it after taking care of some of the larger debts. He has not, however, set up a payment plan. (Tr. 46-49.)

SOR ¶ 1.n: medical account placed for collection for \$188. Applicant testified that this debt was for medical treatment for his son. Applicant paid this debt and had it removed from his credit report. This debt does not appear on the most recent credit reports. (Tr. 49-51; GE 2; GE 3.)

SOR ¶ 1.o: cell phone account placed for collection for \$2,019. Applicant testified that this was an account he had in about 2009, and he disputed the amount owed. He does intend to pay this account but has not set up a payment plan. (Tr. 51-56.)

SOR ¶ 1.p: cell phone account placed for collection for \$769. Applicant testified that he closed the account, because he was dissatisfied with the service. He planned to pay this off in December 2016 but was unable to do so due to lack of money. Applicant plans to contact the creditor in October 2018. (Tr. 56-59.)

SOR ¶ 1.q: gym membership account placed for collection for \$449. Applicant testified that he became a member of the gym in 2013 or 2014 but was unable to use it, because his disability made exercising too painful. He planned to pay this debt and contact the gym in December 2018. (Tr. 59-62.)

SOR ¶ 1.r: cell phone account placed for collection for \$1,982. Applicant testified that this is an account he set up for his sister in about 2009 but is in his name. He has not made any payments but intends to address that bill in 2019. (Tr. 62-63.)

SOR ¶ 1.s: See discussion of SOR ¶ 1.k, *supra*.

SOR ¶ 1.t: gym membership account placed for collection for \$500. Applicant testified that he joined this gym in 2014. He was going to use the membership, but it closed and left no phone numbers or where it had moved. Applicant called a national number and was told they did not have his account. So, he stopped making payments. He intends to pay the collection agency. (Tr. 65-67.)

Applicant testified that he incurred the SOR debts between October 2006 (when he became disabled due to service-connected injuries) and August 2015 (when he found full-time employment). (Tr. 21-23, 27-37, 40-56, 59-63, 65-67; AE A; GE 2-GE 4.)

To sum up, Applicant has resolved the following debts: **SOR ¶¶ 1.c-1.d, 1.j and 1.n = \$10,306.** The following debts have been deleted as being duplicative: **SOR ¶¶ 1.h-1.i and 1.s = \$15,921.** Corrected for duplicate accounts, the SOR alleged \$28,026 of delinquent debts of which \$10,306 have been resolved, leaving \$17,720 of unresolved SOR debt. Applicant has disputed **SOR ¶ 1.k (\$1,257)** with the original creditor, because he claims it failed to give him credit for his down payment (\$1,000) and for monthly payments totaling \$1,200. If that dispute is credited to Applicant, \$16,463 remains of unresolved SOR debt.

Applicant testified about the current state of his finances. His gross monthly pay before deductions is about \$6,000. After payroll deductions, which includes child support

and medical insurance for his two minor children, Applicant's take-home pay is about \$3,900 per month. After deductions for his mortgage, car, utilities, cable, his monthly IT continuing education courses and adding in \$350 per month of VA benefits, Applicant has a monthly remainder of between \$1,500 and \$1,800. He uses that remainder to continue to pay off his delinquent debts. Applicant tried a credit counseling service but was not satisfied with it. His budget is his checkbook. Applicant has a 401(k) plan to which he contributes 3% per paycheck but does not know its balance. In November 2017, he got three credit cards, one with a \$500 line, and two with \$400 lines. Applicant is current with those credit card payments, and they are not maxed out. (Tr. 68-76, 78-80, 84-85.)

Applicant has no student loan payments, because they are deferred while he pursues his Master's degree. He purchased his house in November 2017. At present, Applicant is temporarily renting, because his house has mold infestation to which he is allergic. (Tr. 74, 81-82.)

Policies

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the Manual and the adjudicative guidelines for assignment to sensitive duties is that 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. AG ¶ 2.b.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

When evaluating an applicant's suitability for a public trust 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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15.

An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, testimony, and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 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;

AG ¶ 20(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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous and persist to this day.

AG ¶ 20(b) has two tests. First, the conditions that resulted in Applicant's financial problems must be largely beyond his control. Here, Applicant suffered from a service-connected disability in October 2006. As a result of that disability, he was unemployed until August 2015. The resulting extraordinarily long period of disability-induced unemployment severely impacted Applicant's finances. Those were conditions largely beyond his control. The first test under AG ¶ 20(b) is satisfied.

The second test under AG ¶ 20(b) is whether Applicant acted responsibly under those adverse circumstances. After becoming disabled in 2006 and while receiving SS disability benefits beginning in 2008, Applicant went on to earn an Associate's degree (in 2008) and his Bachelor's degree (in 2014). He then commenced work on his Master's degree. There is no doubt that Applicant's dedication to furthering his education after being declared disabled allowed him to earn full-time employment as a software developer in August 2015. This in turn allowed Applicant to begin to address the financial delinquencies (discussed below) that his disability and unemployment caused. Applicant acted responsibly. Therefore, the second test under AG ¶ 20(b) is satisfied, and AG ¶ 20(b) fully applies.

By the time of the hearing, Applicant had resolved SOR ¶¶ 1.c-1.d, 1.j, and 1.n, totaling \$10,306. Therefore, Applicant submitted evidence of good-faith efforts to pay or settle his delinquent debts. AG ¶ 20(d) is established. Applicant's conduct after he was declared disabled in 2008 shows a track record of responsible conduct, first in improving his chance of getting full-time employment and then once he did, by beginning to address his delinquent debts. Applicant's monthly remainder (between \$1,500 and \$1,800) is sufficient to allow him to defray the remaining SOR debts by setting up payment plans. I am confident that Applicant will continue on that track.

Applicant's testimony about his dispute with the original creditor of SOR ¶ 1.k (\$1,257) was credible and presented a reasonable basis for the dispute. Absent supporting documentation, AG ¶ 20(e) is only partially established for that allegation.

The record does not create doubt about Applicant's trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. (AG ¶ 2(a)(1)-(9).)

Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the interests of national security to grant him eligibility for access to sensitive information.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.g:	For Applicant
Subparagraphs 1.h-1.i:	Withdrawn
Subparagraphs 1.j-1.t:	For Applicant

Conclusion

In light of the record as a whole, I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility is granted.

Philip J. Katauskas
Administrative Judge