



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXXXXXXX)	ADP Case No. 18-01718
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esquire, Department Counsel
For Applicant: *Pro se*

03/04/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s eligibility for a public trust position.

On 6 July 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 9 January 2019, when Applicant’s response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 26 February 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-5 .

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987, as amended, pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) of Security Executive Agent Directive 4, effective with any decision issued on or after 8 June 2017.

Findings of Fact

Applicant admitted the SOR financial allegations. He is a 30-year-old field technician employed by a U.S. defense contractor since April 2017. He served honorably in the United States military from June 2001 until February 2007, when he was discharged in paygrade E-5. He has been divorced since December 2017. He previously held a clearance while in the military. (Item 3).

The SOR alleges, Government exhibits (Items 2-5) establish, and Applicant admits three delinquent debts totaling over \$27,000. The debts comprise two delinquent education loans totaling over \$15,000 and a delinquent automobile loan totaling nearly \$12,000.

Applicant disclosed no financial issues on his November 2017 application for a public trust position (Item 3), but was confronted with the SOR debts during his March 2018 interview with a Government investigator (Item 4). He stated that his ex-wife obtained the automobile loan in his name (in May 2011).³ He stated he was unaware of this delinquency until he was confronted with it during his interview. Similarly, he acknowledged that the education loans were his, but stated that he had received no delinquency notices and was unaware of the delinquencies until he was confronted with them during the interview. Nevertheless, he stated his intent to contact the creditors and arrange payments or otherwise resolve the debts.

However, Applicant has documented no contacts with his creditors since his March 2018 interview. Moreover, he provided no budget or financial statement. He has not documented any financial or credit counseling. He provided no work or character references, or any evidence of community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a position of public trust. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the

³However, he did not state that she had done so without his permission. The account was an individual account.

SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the trustworthiness concerns. Applicant has \$27,000 in delinquent debt for which he has documented no action since at least March 2017.⁵

Applicant meets none of the mitigating conditions for financial considerations, given that he has documented no actions to address his debts. Moreover, his financial problems are recent, frequent, and incapable of assessment since he has provided no explanation about how he came to be so delinquent on these accounts.⁶ He has not documented that the debts were due to circumstances beyond his control, and his apparent inaction for nearly two years is certainly not responsible.⁷ Applicant has had no credit or financial counseling, and there is no evidence any of the debts have been, or are being, resolved.⁸ Further, his lack of effort cannot constitute a good-faith effort to address his debts.⁹ Accordingly, I conclude Guideline F against Applicant.

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations;

⁶¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁸¶20(c) the individual has received or is receiving counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

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

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-c: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue public trust eligibility for Applicant. Eligibility for public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge