



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



In the matter of:)
)
) ADP Case No. 18-02070
)
)
Applicant for Public Trust Position)

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: *Pro se*

February 12, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987. (Superseded by DoD Manual 5200.02)

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 13, 2016. (Government Exhibit 1.) On September 4, 2018, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guideline F Financial Considerations, and Guideline B Foreign Influence regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

Program (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR on September 24, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 29, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 6, 2018. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered no exhibits at the hearing. He testified on his own behalf. The record remained open until close of business on December 20, 2018, to allow Applicant the opportunity to submit supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 17, 2018.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the Islamic Republic of Iran. Department Counsel provided a 7 page summary of the facts, supported by sixteen Government documents pertaining to Iran, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 60 years old. He is unmarried with no children. He has a Bachelor's degree in Mathematics and a Doctorate of Chiropractic degree. He is employed by the Navy and works on a Marine Corps base. He is seeking access to sensitive information in connection with his employment.

Guideline F - Financial Considerations

The Government opposes Applicant's request for access to sensitive information on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR.

The Government alleges that Applicant is eligible for a public trust position because he is financially overextended and at risk of having to engage in illegal acts to generate funds. The SOR identified eleven delinquent debts totaling in excess of \$230,000. Applicant admitted allegation 1.a., and denied the remaining allegations under this guideline. Credit reports of the Applicant dated August 10, 2010; August 12, 2016; and July 18, 2018, reflect that the debts are still owing. (Government Exhibits 4,

5, and 6.) Applicant has worked for his current employer for the past two and a half years. He currently earns \$125,000 annually.

Applicant has practiced as a chiropractor in various states throughout the country for the past 30 years. He explained that when he graduated from chiropractic school in 1989, there were not very many good jobs available. He made enough money to live on, for rent, food and electricity, but not enough to pay his past due debts on any consistent basis. It was not until the last five or six years that his position has really become stable. He has not incurred any new debt over the past six to eight years. Applicant testified that since 2012, he has been able to make good money and he is now able to pay his delinquent debts. The following debts became delinquent and owing:

1.a. Applicant is indebted to the Government for student loans that were placed for collection in the approximate amount of \$185,575. (Tr. p. 25 - 27.)

1.b. Applicant is indebted to State A, for a tax lien entered against him in August 2013 in the approximate amount of \$861. Applicant stated that he made a payment in the amount \$1,200 about two weeks ago and was told that he owes nothing else. (Tr. p. 27.) Applicant submitted no documentary evidence to support his contentions.

1.c. Applicant was indebted to a creditor for an account that was charged off in the approximate amount of \$171. Applicant stated that he has not addressed this debt yet. (Tr. p. 29.)

1.d. Applicant was indebted to a creditor for an account that was placed in collection in the approximate amount of \$2,154. Applicant stated that he has not addressed this debt yet, nor has he attempted to contact the creditor. (Tr. pp. 29 – 30.)

1.e. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$1,590. Applicant stated that he has no knowledge of the debt, and has done nothing to resolve it. (Tr. p. 30.)

1.f. Applicant was indebted to a creditor for an account that was placed for collection in the in the approximate amount of \$549. Applicant stated that until he met with the OPM investigator on June 5, 2017, he did not know about the debt. Since then, he has done nothing to resolve it. (Tr. p. 30.)

1.g. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$500. Applicant stated that he has not addressed this debt yet, nor has he attempted to contact the creditor. (Tr. p. 31.)

1.h. Applicant is indebted to a creditor for an account that was placed for collection in the approximate amount of \$99. Applicant has done nothing to resolve the debt. (Tr. p. 31.)

1.i. Applicant is indebted to the Federal Government for a Federal tax lien filed against him in June 2005 in the approximate amount of \$41,534. Applicant stated that he has been on the telephone with the IRS several times and has been told that he does not owe them anything. (Tr. p. 31.) He provided documentation from the IRS for tax years 2006. This does not show if he owes anything since then. (Applicant's Post-Hearing Exhibit A.)

1.j. Applicant is indebted to State A, for a tax lien filed against him in August 2006, in the approximate amount of \$714. (Government Exhibit 7.) Applicant stated that he made a payment in the amount \$1,200 about two weeks ago, and was told that he owes nothing else. (Tr. p. 27.) Applicant submitted no documentary evidence to support his contentions.

1.k. Applicant is indebted to State A, for a tax lien filed against him in February 1999, then refiled in September 2002, in the approximate amount of \$1,030. (Government Exhibit 8.) Applicant stated that he made a payment in the amount \$1,200 about two weeks ago, and was told that he owes nothing else. (Tr. p. 27.) Applicant submitted no documentary evidence to support his contentions.

Guideline B – Foreign Influence

The Government alleges that Applicant is eligible for a public trust position because he has foreign contacts and interests, including but not limited to, business, financial, and property interests, that are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant admits the allegation set forth under this guideline in the SOR. His girlfriend is a citizen and resident of Iran. She works as an OBGYN physician in Iran. In about October 2016, he met her on an on-line computer website. He saw her picture, sent her a message, and she messaged him back. They started talking, and six months or so later, they met in Dubai. (Tr. p. 34.) Applicant talks with her daily by telephone or electronically. He has physically seen her a total of three times, and in mid-2017, they became engaged. (Tr. p. 35.) Her parents are retired. Her father used to work in a factory. He does not know where her mother worked if she did. His girlfriend has two sisters, who are dentists. One sister lived in Dubai for a while, and now lives in Iran. Her husband is the dean of the dental college there. The other sister left Iran, and now lives in Copenhagen. (Tr. p. 36.) Her husband is also a dentist. (Tr. p. 37.) Applicant's girlfriend is currently in the process of moving to Dubai. She has taken her medical licensing examination and already has a job lined up with a hospital there. (Tr. p. 38.)

I have taken administrative notice of the information set forth in the Government's brief on the Islamic Republic of Iran. Iran is known to target the United States to obtain classified or sensitive information, and is associated with a risk of terrorism. Of all the countries in the world, Iran remains the most prominent sponsor of terrorism, providing financial aid, advanced weapons and tactics, and direction to militant and terrorist groups across the Middle East and cultivating a network of operative across the globe as a contingency to enable potential terrorist attacks. The United States does not have diplomatic or consular relations with Iran. The Department of State warns U.S. citizens not to travel to Iran due to the risk of arbitrary arrest and detention noting that there is a very high risk of arrest and detention of U.S. citizens, particularly U.S. – Iranian dual nationals. Iranian authorities continue to unjustly detain and imprison U.S. citizens on charges including espionage and posing a threat to national security. (HE 1.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to sensitive information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Four are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal , state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

Applicant has a history of financial distress. He is excessively indebted to various creditors that include delinquent student loans, state and Federal tax liens, and other miscellaneous debt totally approximately \$230,000. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant testified that after graduating from chiropractic school, he was unable to find stable employment that paid him enough to pay his bills. He only started making good money in 2012 or so, that would allow him to address his delinquent debts. Even so, he did not resolve them. He has not made a good-faith effort to resolve his debts. He stated that he has paid his state and Federal tax liens. He has provided no documentary evidence from the state tax authorities that show he has paid the debts. He has submitted a document from the IRS, showing that he owes nothing for tax year 2006. He has provided nothing else. Applicant has done little to show that he can or will resolve his debts. He did not contact the creditors in the SOR to set up a payment plan that he is following. Knowing that the Government was concerned about his financial indebtedness, he did not even pay off a smaller debt for \$99 that is set forth in the SOR that remains owing. Most of the delinquent debt set forth in the SOR remain owing. For over 30 years Applicant practiced as a chiropractor and did not act responsibly toward his delinquent debt. Now he states that he is going to resolve the debt, but it is too late. In this case, none of the mitigating conditions are applicable. There is no clear evidence in the record that he has acted reasonably and responsibly. His actions reflect unreliability, untrustworthiness, and poor judgment. The record fails to establish sufficient mitigation of financial trustworthiness concerns under the provisions of AG ¶¶ 20(a) through 20(g).

Guideline B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

Applicant's girlfriend is a citizen and resident of Iran. Applicant does not know her well. He met her through an on-line computer website. He has physically seen her on three occasions. He is now engaged to marry her. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) the foreign contacts and activities are on U.S. Government business or are approved by the agency head or designee;

(e) the individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's relationship with his girlfriend poses a significant security risk to the United States. His girlfriend is from a nation that is of great concern to the United States. Applicant's infrequent contact with his girlfriend is troubling in that Applicant has limited information about her. Yet, he is engaged to marry her. Under the circumstances, he does not have sufficient information about her to establish that she does not pose a significant security risk to the United States. There is insufficient mitigation here. Accordingly, I find against the Applicant under Guideline B (Foreign Influence).

Whole-Person Concept

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

(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.

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

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult,

who has failed to demonstrate that he can live within his means, budget his income accordingly, and pay his bills in a timely fashion. At this point, his financial problems continue as there is no evidence that they have been resolved.

Overall, the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a public trust position. He has not met his burden to mitigate the trustworthiness concerns arising under the guidelines for Financial Considerations and Foreign Influence.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a public trust position for the Applicant.

Darlene Lokey Anderson
Administrative Judge