



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



In the matter of:)
)
) ADP Case No. 18-02073
)
Applicant for Public Trust Position)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/28/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the trustworthiness concerns under Guideline F (Financial Considerations). Eligibility for access to sensitive information is granted.

Statement of the Case

On January 25, 2017, Applicant submitted a security clearance application (SCA). On August 31, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On September 14, 2018, Applicant responded to the SOR, and he requested a hearing before an administrative judge. He submitted a student loan payment receipt

and a credit report with his SOR response. On February 28, 2019, the case was assigned to me. On March 5, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing, setting the hearing for March 20, 2019.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which I admitted without objection. Applicant testified and offered four documents, Applicant Exhibits (AE) A through D into evidence, which I admitted without objection. I held the record open for one month in the event either party wanted to submit additional documentation. DOHA received the hearing transcript (Tr.) on April 1, 2019. Neither party provided additional records, and the record was closed on April 20, 2019.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 33 years old. He never married and does not have any children. In 2015, he earned an associate's degree in computer information systems. He was unemployed from October 2010 until June 2015. His current employer, a Federal contractor, hired him in February 2017 as a scanning technician. The employer hires individuals with disabilities, and Applicant's disability is for his condition diagnosed as autism. This is Applicant's first time application for a position of public trust. (Tr. 15-18)

Applicant was not employed while he attended school. His mother financially supported him during this time. Despite his mother's financial assistance, Applicant's long period of unemployment caused him to accumulate delinquent debt.

SOR ¶¶ 1.a, and 1.c-1.f allege five student loan accounts placed for collection in the total amount of about \$20,000. He admitted these allegations in his SOR response. Applicant was not aware that his student loans were delinquent until he had his background interview in March 2018. Since September 2018, he has made consistent payments in varying amounts, between \$200-to-\$500 a month. He missed one payment during the Government shutdown, while the payment system was not in operation. (Tr. 18-21, GE 2, GE 4; AE A, AE C)

SOR ¶¶ 1.b and 1.i allege two delinquent medical accounts totaling about \$5,400. Applicant admitted both accounts in his response to the SOR. These accounts stem from his five-day hospital admission in May 2015. He had insurance during this time, but the accounts reflect the remainder amount he was responsible to pay. Applicant has not yet paid these accounts, but it is his intention to pay these accounts in the near future. (Tr. 23-25; GE 2)

SOR ¶ 1.g alleges a past-due credit card account in the amount of \$338, with a total balance of \$1,096. Applicant admitted this debt. He was recently offered a settlement from the creditor, and it is his intention to pay this debt within the next month or two. (Tr. 22-23; GE 2)

SOR ¶ 1.h alleges a past-due credit card account in the amount of \$541. Applicant admitted this debt, and he provided a document at the hearing showing he paid the account in full in December 2018. (Tr. 23; GE 2; AE D)

SOR ¶ 1.j alleges a past-due account in the amount of \$73. Applicant admitted this debt, but at the hearing, he denied any knowledge of this debt. He has not received any letters from any creditor for \$73. He researched this account, but he was unable to discover if the debt belonged to him, or determine the original creditor. If he finds that he is responsible for this account, it is his intention to pay it. (Tr. 25-26)

SOR ¶ 1.k alleges a collection account in the amount of \$294. Applicant originally denied this account in his response to the SOR, but at the hearing, he admitted this account belonged to him. When he researched this account, he discovered it was for cable service that he did not pay. It is his intention to pay this account in full in the near future. (Tr. 26)

SOR ¶ 1.l alleges a past-due account placed for collection in the amount of \$2,783. Applicant denied this debt in his response to the SOR. He believed this account stemmed from 2011 when he and his mother co-signed an apartment lease. His mother unexpectedly became unemployed, Applicant was unemployed, and they broke the lease. His mother told him that she had paid this account. It was Applicant's intention to discuss this account with his mother and determine whether this account had been paid in full. (Tr. 26-27)

SOR ¶ 1.m alleges a past due account in the amount of \$450, for an unpaid utility account. Applicant denied this debt because he did not recognize this account. He has not received any letters or phone calls from this creditor. He tried to do some research into this account, but he was unable to find if the debt belonged to him, or locate the creditor. If he finds that he is responsible for this account, it is his intention to pay it. (Tr. 28; GE 2)

Applicant has not participated in financial counseling, but he does maintain a strict monthly budget. He has saved money and recently opened a savings account. He does not have any new delinquent debt and he is current on all of his expenses. He files all of his tax returns timely. In order to save money, Applicant does not own a car and takes the bus instead.

Applicant's direct supervisor submitted a character reference letter. His supervisor disclosed that Applicant's employer is a nonprofit company dedicated to employing individuals with disabilities. He found Applicant to be sincere and honest, despite that he struggles greatly with his autism. Applicant is dependable and makes sensible decisions on the job. His supervisor views Applicant's employment as a success story. (AE B)

Policies

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in 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.

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.

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.¹ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.² An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.³ 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

¹ Directive ¶ E3.1.14.

² Directive ¶ E3.1.15.

³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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. . . .

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The evidence of record establishes AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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.

Applicant experienced financial difficulties due to prolonged unemployment from 2010 to 2015. He was enrolled in classes while his mother supported him during the majority of this time period. The circumstances which resulted in Applicant's financial

problems were not completely beyond his control. Applicant chose to devote his time to school instead of looking for a job, or working for an employer. However, I find these particular set of circumstances are unlikely to recur. Once Applicant received his associate's degree, he found full-time employment.

Applicant did not realize he was delinquent in paying his student loans until his March 2018 background interview. Since September 2018, he has made consistent student loan payments, ranging from \$200-to-\$500 each month. In addition, he paid off a delinquent credit card account. He has stated his intention to pay another credit card account and a cable bill in the near future. Applicant has made sufficient progress towards resolving his financial accounts, and demonstrated a good-faith effort to repay delinquent creditors. Although he has not participated in financial counseling, Applicant is taking action to prevent additional delinquencies with a firm monthly budget. He recently demonstrated financial responsibility by opening a new savings account in the event there is an unplanned emergency. Mitigating conditions AG ¶¶ 20 (a), (b), (c) and (d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance 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 have incorporated my comments under Guideline F in my whole-person analysis. Applicant has made consistent student loan payments after he discovered he was delinquent. He repaid a delinquent credit card account, and took responsible action with his budget in an effort to pay off his remaining creditors. He provided a favorable character reference letter from his direct supervisor. Overall, the record evidence leaves me without doubts or concerns as to Applicant's good judgment, reliability, and suitability for a position of public trust with the Government.

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: FOR APPLICANT

Subparagraphs 1.a-1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a public trust position. Eligibility for public trust position is granted.

Pamela C. Benson
Administrative Judge