



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



In the matter of:)
)
) ADP Case No. 19-01282
)
Applicant for Public Trust Position)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*
10/04/2019

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations) and Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an electronic questionnaire for investigations processing for a public trust position (eQIP) on October 16, 2018. On May 8, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging trustworthiness concerns under Guidelines F and H. The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on June 5, 2019, and requested a decision on the written record without a hearing. On July 12, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 7. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on July 22, 2019, and did not respond.

Items 1 through 3 are the pleadings in the case. Items 4 through 7 are admitted into evidence. The case was assigned to me on September 12, 2019.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 3), his eQIP (Item 4), and a summary of his background interview (Item 5). Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. In a section entitled "**IV. Important Notice to Applicant,**" the Government notified Applicant of his right to object to the admissibility of Item 5 on the ground that it was not authenticated. In that section, Applicant was also notified that if he did not raise any objection to Item 5 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 5 could be considered as evidence in his case. Applicant received the FORM, which included a copy of Item 5. He did not respond to the FORM or otherwise object to Item 5.

Findings of Fact

Applicant, age 34, has been married since 2014. He received his high school diploma in 2003. He attended college from 2003 through 2006, without earning a degree. He has been steadily employed full time since at least 2007, most recently as an analyst by a health insurer since June 2018. This is his first application for a public trust position.

When Applicant's husband lost his job in 2015, Applicant's income of \$11 per hour did not, alone, suffice to meet their expenses. They began to rely on credit cards to "stay above water." In about 2016, they maxed out credit cards, defaulted on their car loan, and fell behind on other expenses. After Applicant willfully surrendered the car to the lender, the loan account was charged off in the amount of \$10,800 (SOR ¶ 1.a). A credit-card account was placed for collection in the amount of \$3,263 (SOR ¶ 1.b). That debt was duplicated in SOR ¶ 1.c. Three utility accounts totaling \$1,067 (SOR ¶¶ 1.d, 1.f, and 1.g), and one \$185 internet account (SOR ¶ 1.e) were placed for collection. Applicant's six delinquent debts totaling \$15,315 remain unresolved. (Item 4 at 42-46; Item 5 at 4-6; Item 6; Item 7)

Applicant proclaimed in his October 2018 eQIP, during his December 2018 background interview, and in his June 2019 SOR answer that he had been working to settle or otherwise resolve his delinquent debts. While he affirmed each of the financial allegations in his SOR answer, he asserted that he did not owe any balance for the car loan because the creditor charged off the account, and had not attempted to collect any further money from him after the repossession. He plans to resolve the five collection debts "within the next couple of years, starting with the utility bills and smaller amounts, and eventually paying back all debts that are not charged off." (Item 3 at 4). Other than Applicant surrendering his car, the record does not specify what, if any, his debt resolution efforts have entailed or any documents corroborating those efforts.

During his December 2018 background interview, Applicant declared that he was living within his means, able to pay his ongoing expenses, and had sufficient funds to keep a balance of approximately \$400 to 500 in his checking account that rolled over each month. He also stated that he and his husband were both gainfully employed. The record does not specify when his husband resumed employment after 2015, but he had “extreme difficulty” with “obtaining gainful employment.” Applicant’s income increased with his current employer such that it could alone suffice to meet their expenses regardless of whether his husband was employed. Applicant has not received any financial counseling. (Item 3 at 3; Item 5 at 6)

Applicant used marijuana “six to seven times a week” from June 2009 through October 2018. He purchased it from an unspecified source for \$200 to \$300 every two weeks. During this period, he smoked it with his husband, friends, and family members at home together in a social setting. Applicant used marijuana as “a crutch” to cope with stress and anxiety. He acknowledged that his marijuana use “held [him] back in many areas of [his] life,” and stated that he was “not likely to use marijuana in the future unless it becomes federally legal to use.” He has learned alternative techniques for dealing with his stress and anxiety, including “meditation, journaling, and talking with family.” (Item 4 at 38-39; Item 5 at 2-3)

Applicant tried LSD one time in December 2016. He used it with his husband at home. He did not enjoy the experience and stated that there was a “zero chance” he would use LSD in the future. The motivation for his use was to “escape reality” for a moment during a time when his mother was undergoing treatment for cancer. (Item 4 at 38-39; Item 5 at 3)

The record did not specify with which friends or family members Applicant and his husband used marijuana. However, Applicant averred that he and his husband have discontinued associating with “people” who use illegal drugs. The record did not specify whether Applicant’s husband stopped using marijuana and LSD. Applicant has never been professionally diagnosed as abusing drugs or being drug dependent. (Item 5 at 2-3)

Applicant averred that he “made every attempt to turn [his] life around” and was “working with a number of people to formulate a plan to continue improving.” He asserted his belief that “the issues described in the SOR” do not represent “any threat to the safety of confidential information” that he may need to access during the course of his job. He maintained that he had been “honest and forthcoming” in his SOR answer. He denied that there was “any possibility” that the facts alleged in the SOR could be used to “coerce” him into “surrendering confidential information.” He did not believe that granting him access to sensitive information would “pose any threat” to the U.S. government or its citizens. (Item 3 at 4)

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. (Directive, § 3.2).

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG. (Directive, Enclosure 2). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position. (Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15). 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 national security eligibility will be resolved in favor of the national security." 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 of potential, rather than actual, risk of compromise of 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. 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

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

Because it duplicates another alleged debt, I found SOR ¶ 1.c in Applicant's favor. As to the remaining unresolved debts, Applicant's admissions and his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable mitigating conditions under this guideline are established:

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; and

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

Applicant has substantial delinquent debts that remain unresolved, despite his gainful employment since at least June 2018. He failed to demonstrate that he acted responsibly to address them, particularly since he was spending \$200 to \$300 every two weeks through October 2018 on his marijuana use. The fact that his car-loan creditor charged off his account does not relieve him of the obligation he has to repay the debt he incurred. His proffered plan to resolve his debts within the "next couple of years" does not suffice to establish that he has either initiated or is adhering to a good-faith effort to resolve his delinquent debts. Thus, I cannot conclude that Applicant has mitigated the Guideline F concerns.

Guideline H: Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's use of marijuana and LSD establishes the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following potentially applicable mitigating conditions under this guideline have not been fully established:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's LSD use, alleged in SOR ¶ 2.b, was isolated and is unlikely to recur. The same cannot be concluded for his frequent marijuana use over an extended period, which ended only a year ago. The fact that he illegally purchased the marijuana that he used exacerbates the concern. While he discovered alternative strategies for dealing with the stress and anxiety to which he attributed his marijuana use, he has not established a sufficient pattern of abstinence. I am unable to conclude that his marijuana use is unlikely

to recur, particularly given that he neither provided a signed statement of intent nor established that his husband and any of the family members with whom he continues to associate no longer use marijuana or other illegal drugs. While I find SOR ¶ 2.b in Applicant's favor, the concerns underlying his marijuana use have not been mitigated. I have doubts about Applicant's reliability, trustworthiness, and judgment.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. In evaluating the relevance of an individual's conduct, an 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.

I have incorporated my comments under Guidelines F and H in my whole-person analysis, and I have considered the factors AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and H, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated trustworthiness concerns raised by his financial indebtedness and marijuana use. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for a public trust position.

Formal Findings

Formal findings 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
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.g:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant

 Subparagraph 2.b: For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Gina L. Marine
Administrative Judge