



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



In the matter of:)
)
 [REDACTED]) ADP Case No. 19-01065
)
 Applicant for a Public Trust Position)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*
03/31/2020

Decision

HESS, Stephanie C., Administrative Judge:

Applicant incurred delinquent debts, however his finances are now under control. He has mitigated the Guideline F (Financial Considerations) concern. Eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on March 21, 2018. On April 24, 2019, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The 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) effective June 8, 2017.

Applicant answered the SOR on May 23, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 5, 2019, and the case was assigned to me on March 20, 2018. On August 30, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 25, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant and his wife testified.

I left the record open until October 9, 2019, to enable Applicant to submit documentary evidence. DOHA received the transcript (Tr.) on October 15, 2019.

Findings of Fact

The SOR alleges that Applicant filed Chapter 7 bankruptcy in November 2009, which was discharged in April 2010, and that he has six delinquent debts totaling \$29,430. The debts include deficiency balances on two repossessed vehicles totaling \$27,191, three credit-card accounts totaling an \$8,222, and a \$164 medical bill. In his Answer, Applicant admits the bankruptcy and the medical debt and denies the other debts. The debts are reflected in Applicant's credit bureau reports (CBR) from March 2019 and March 2018, listed on his e-QIP, and discussed during his November 2018 personal subject interview. (GX 4; GX 3.) His admissions in his Answer are incorporated in my findings of fact.

Applicant, 53, has been employed as an aircraft parts cleaner for a defense contractor since February 2018. He and his wife married in 1992 and have five sons: a 14-year-old who resides with them; a disabled 23-year-old who Applicant supports financially; and three of whom are independent adults. This is Applicant's first application for a position of trust. (GX 1; Tr. 57-58.)

Applicant served honorably in the U.S. Army from 1986 until 1990. He worked for a state's department of corrections from 1990 until he retired in August 2016 as a community corrections center monitor. For many years, Applicant's wife was unable to work outside the home because she cared for their disabled son. Some of their son's medications had a \$250 co-pay and another medication that was not covered by insurance cost approximately \$2,300 per month. Applicant and his wife applied for state assistance to help with their son's expenses, but were denied on the basis that Applicant earned too much money. Applicant and his wife were under constant financial strain, living paycheck to paycheck, and amassing significant credit-card debt. (Tr. 56-58; GX 3; GX 5.)

In 2009, as a state employee, Applicant did not receive eight consecutive paychecks over a period of four months because the state was unable to reach a budget agreement. Applicant and his wife received some financial assistance from other family members and relied on food banks to feed their family. Ultimately, Applicant received the back-pay in a lump sum, which was taxed at a higher rate than his usual income. As a result of this unanticipated period of no income, combined with their ongoing financial strains, Applicant and his wife filed for Chapter 7 bankruptcy in November 2009. The bankruptcy was discharged in April 2010. (Tr. 56-59; GX 5.)

Following the discharge of the bankruptcy, Applicant and his wife purchased a vehicle because their current vehicle was not running and in an effort to reestablish their credit. It was their understanding that the approximately \$20,000 purchase was made using a special financing program under which they would make monthly payments of \$487, included a 29.5% interest rate, for six months. If they made timely payments, the

interest rate would then drop to between 16% and 18%, which would have lowered the monthly payment to \$367. However, the creditor did not honor this agreement. Applicant's wife referred to the loan as "predatory." Applicant consulted with his bankruptcy attorney who advised him to surrender the vehicle to the bank, which Applicant did. Additionally, Applicant and his wife learned in credit counseling, as required by their bankruptcy, that they needed to maintain a strict budget. They could not sustain the \$487 car payment for the course of the loan and remain within their tight budget. (Tr. 24-26.) The vehicle was sold at auction and the creditor charged the debt off for \$10,854. (SOR ¶ 1.a.) The creditor has not made any other contact with Applicant. (Tr. 34-37; GX 3.)

Applicant and his wife purchased a used vehicle in October 2012 for approximately \$15,000. The purchase was made from a large local dealership with an initial interest rate of 14%. It was Applicant and his wife's understanding that the interest rate would adjust downward after an unspecified period of complying with their payments. The vehicle was a 2006 model and needed frequent repair, which placed additional pressure on their perpetually strained finances. At some point, the dealership sold the loan to another creditor and the interest rate increased. Unable to maintain the payments with their other expenses, Applicant and his wife surrendered the vehicle for repossession. The creditor notified Applicant within 60 to 90 days that the vehicle was sold at auction, but has not made any other contact with Applicant. (Tr. 27-29; Tr. 38-43.) The account was charged off for \$16,337 (SOR ¶ 1.e.) This account shows a \$0 on the March 2019 CBR.

Applicant's wife manages the household finances and offered the majority of the testimony regarding the SOR debts. After completing credit counseling, she and Applicant instituted a strict budget, and despite their tight finances, were able to maintain their ongoing financial obligations without incurring any delinquencies. However, they did not have the financial ability to address the debts from the repossessed vehicles. (Tr. 36-37.) After Applicant's retirement, he and his wife intended to move to another state and purchase a home using a VA loan. In September or October 2016 in anticipation of applying for the loan, Applicant's wife contacted the creditors of the two charged-off repossession deficiencies in an effort to resolve the debts. (Tr. 24-32.)

After multiple unsuccessful attempts, Applicant's wife was eventually able to contact the two creditors and offer to enter repayment plans. She also attempted to settle SOR ¶ 1.e with a lump-sum payment from money Applicant received as a payout for his unused leave when he retired. Applicant's wife was told by both creditors that the contracts had been canceled and the debts charged-off, therefore, the creditors were unable to accept any form of repayment. She has since disputed both debts with the credit reporting agencies. She stated that the debt alleged in SOR ¶ 1.a was removed from Applicant's credit report in May 2019 and SOR ¶ 1.e was removed in July 2019. She has not received a cancellation of debt notice from either creditor. (Tr. 27-29; Tr. 34-43; Tr. 58.)

In March 2016, Applicant and his wife opened their first credit-card account since their 2010 bankruptcy discharge. Applicant's wife testified that they paid \$500 for a secured credit card, with a monthly fee of \$25 and annual fee of \$79. It was their practice

to use the card for gasoline, then pay the balance. Applicant's wife canceled the card online and received confirmation that the account was closed. It is her recollection that the account had a \$0 balance when she closed it. However, the \$512 charged-off debt alleged in SOR ¶ 1.d is for this account. She contacted the creditor and requested an accounting, and offered to settle the account. She has not received any response from the creditor. (GX 4; Tr. 29-32; Tr. 47-48.)

Applicant and his wife moved to another state in August 2016. It was their intention for Applicant to be fully retired and for them to live off of his pension of \$2,530 per month and Applicant's wife's income from part-time substitute teaching. They purchased their first house in November 2016. (Tr. 54-55.)

The \$913 charged-off debt alleged in SOR ¶ 1.b is for a credit card that Applicant and his wife opened in January 2017. They used the card to pay for replacing the water pump in their new home. Shortly thereafter, Applicant's wife realized that the card had a very high interest rate. She closed the account and canceled the card online. It is her recollection that the account had a \$0 balance when she closed it. She thinks it is possible that there is a balance owed but disputes the charged-off amount. She contacted the creditor and requested an accounting, and offered to settle the debt. She has not received any response from the creditor. (Tr. 41-45.)

In September 2017, Applicant and his wife sustained damage to their house from Hurricane Irma. After their insurance company covered the loss, it canceled their plan. They purchased a new plan and their annual insurance premium increased from \$1,600 to \$3,700. Their property taxes also increased. The end result is that their mortgage increased by approximately \$500 per month. Additionally, when Applicant retired, he and his wife lost their vision and dental insurance coverage, which increased their out-of-pocket expenses. Further Applicant experienced health issues that required treatment and he had to pay a \$3,000 deductible. In order to manage the additional financial obligations, and in order to avoid incurring any additional debt, Applicant returned to full-time employment in February 2018. (Tr. 54-56.)

Applicant's wife does not recognize the \$650 credit-card account alleged in SOR ¶ 1.c. Applicant's wife thinks this is probably their son's account. Applicant and his wife have a son with the same name as Applicant and there have been other instances when their son's accounts have been attributed to Applicant. Applicant's wife has disputed this account with the credit reporting agencies. (Tr. 29-32; Tr. 45-47.)

Applicant's wife received a call from the creditor of the \$164 medical debt alleged in SOR ¶ 1.g. She initially thought the medical bill should have been covered by insurance so she contacted her insurance carrier and obtained an explanation of benefits. She confirmed that she owed the \$164, and paid it in January or February 2019. (Tr. 32.)

Applicant's wife now works in a full-time permanent position as a substitute teacher. In addition to Applicant's pension, the couple brings home approximately \$3,600 a month. They are current with their mortgage and do not have any open credit-card

accounts. They have a checking account with approximately \$700, a retirement account with approximately \$2,900 and Applicant's 401(k) has a balance of approximately \$15,000. They have two vehicles that are paid off, one of which they bought with the money Applicant received as a payout for his unused leave when he retired. They maintain a strict budget online through their bank and Applicant's wife monitors their accounts and credit score daily. They pay all of their ongoing financial obligations electronically through automatic debits. They live within their means and maintain money for use in the event of an emergency. They have not incurred any recent delinquent accounts. Applicant and his wife maintain their willingness and ability to resolve their outstanding accounts. (Tr. 49-54.)

Policies

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. AG ¶ 2(b) requires that "[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 a public trust position.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The record evidence establishes two 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.

Applicant's past financial problems are attributable to matters largely beyond his control. Specifically, he did not get paid for four months in 2009, which pushed his already strained finances, due in large measure to the costs of his disabled son's medical care and Applicant's wife's inability to work outside the home, over the edge. Applicant acted responsibly by filing bankruptcy and completing credit counseling.

Following the bankruptcy, Applicant and his wife needed to purchase a vehicle, and in doing so wanted to begin reestablishing their credit. They entered a purchase agreement in good faith but the creditor did not comply with the agreement. Applicant and his wife acted responsibly by following their attorney's advice, and by honoring their budget, when they surrendered the vehicle. Applicant and his wife then purchased a less-expensive used vehicle, and were again victims of predatory lending practices. The charged-off balances for the two voluntary repossessions constitute 92% of the SOR debt. (SOR ¶¶ 1.a and 1.e.) Applicant's wife contacted the creditors in a good-faith effort to resolve the accounts but they are closed and charged off. Applicant's wife paid the \$164 medical debt and has disputed the other SOR debts. She has also requested accountings of the two credit-card debts and she and Applicant are willing and able to resolve these accounts.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

After purchasing their first house, Applicant and his wife's financial obligations increased. They demonstrated their financial responsibility by not incurring any new delinquent debts and through Applicant's return to full-time employment. Applicant and his wife live within their means and are current on their mortgage-loan payments and other financial obligations. They have a savings account and retirement accounts. They are both employed full time and Applicant receives a pension. They do not have any open credit-card accounts. They completed credit counseling and have implemented sound financial practices, including adhering to a budget, paying their bills through automatic debits, and maintain an emergency fund.

Applicant and wife's past financial delinquencies were not due to frivolous or irresponsible spending. They have made a good-faith effort to repay or dispute their debts and have instituted a plan to maintain their financial stability. AG ¶¶ 20 (a), 20(b), 20(d), and 20(e) apply.

Whole-Person Concept

Under AG ¶ 2, the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2.

I have incorporated my comments under Guideline F in my whole-person analysis and have considered the factors in AG ¶ 2, but have also considered the following:

Applicant served honorably in the U.S. Army for four years and worked as a community correctional monitor for 26 years. While Applicant and his wife experienced financial difficulties that resulted in delinquent debts, they have taken proactive measures to ensure their ongoing financial stability.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the trustworthiness concerns raised by his financial circumstances. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to sensitive information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.g:

For Applicant.

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Stephanie C. Hess
Administrative Judge