



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



In the matter of:)
)
 [REDACTED]) ADP Case No. 19-01492
)
 Applicant for Public Trust Position)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*
01/06/2020

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). 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 November 19, 2018. On May 20, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F. 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 August 27, 2019, and requested a decision on the written record without a hearing. On October 16, 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 5. 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 October 28, 2019, and timely submitted his response, to which the Government did not object. Items 1 and 2 are the pleadings in the case. Items 3 through 5 are admitted into evidence. Applicant’s FORM

response included documents that are admitted into evidence as Applicant Exhibits (AE) A through G. The case was assigned to me on December 13, 2019.

Procedural Matter

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), his eQIP (Item 3), and a summary of his background investigation interview (Item 4). Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 4 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 4 could be considered as evidence in his case. Applicant did not raise any objections in his FORM response or otherwise.

Findings of Fact

Applicant, age 31, has been married since 2015. He has four minor children. He earned his high school diploma in 2007. He attended college from 2007 through 2010, without earning a degree. He has been employed by various defense contractors as a clerk for the same military medical center since February 2011. He underwent a background investigation in 2010 for a temporary position he had with a defense contractor. He did not know the level of access, if any, granted to him in connection with that investigation. The current status of his access was not otherwise specified in the record.

Applicant admitted each of the four student-loan debts alleged in the SOR totaling \$54,226, at least two of which are federal loans totaling \$20,183. In his SOR answer, without providing any corroborating documents, he denied the \$786 credit-card debt alleged in SOR ¶ 1.e on the basis that he resolved it via a \$500 settlement. However, in his FORM response, he acknowledged that it remained delinquent and that he set up a payment plan to resolve it via \$25 monthly payments beginning in November 2019. He did not provide proof that he made any of those payments. Although he asserted, during his January 2019 background investigation interview, that his financial situation was "great" and that he was willing and able to pay his debts, he has not resolved any of the SOR debts. (Items 2, 4; AE A)

Applicant claimed that he fell behind in payments to his student-loan creditors between about 2013 and 2016 because he could not afford the \$500 monthly payments. He also asserted that status of the monthly payments he had been making for the credit-card account alleged in SOR ¶ 1.e. was unknown after the creditor filed bankruptcy. On his eQIP, he reported one period of unemployment that followed a relocation, from January 2010 through March 2010. He has been steadily employed full time since April 2010. He did not otherwise provide more specific details, such as his relevant income and expense history, to explain not only why his debts occurred, but also why they have persisted. (Item 4 at 2)

In his FORM response, Applicant asserted that he made numerous attempts to resolve his student-loan debts over the past eleven years, but struggled with the monthly payments given the unspecified costs associated with providing for the needs of his family of six. He claimed to have been in negotiations with a company to consolidate those loans. However, he had not yet reached a resolution. He did not provide any documents to corroborate these claims.

Applicant understands the concerns with persons who may use their sensitive position for financial gain. However, he maintained that he is not a risk because he would never do anything to jeopardize his relationship with his wife and four children. He provided copies of numerous certificates of training he has received in connection with his employment. (FORM response; AE B-G)

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 his or her 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))

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, including federal student loans, despite being steadily employed full time since April 2010. He failed to establish that his financial situation resulted from circumstances beyond his control or that he acted responsibly to address his delinquent debts. He did not provide proof that he made any of the alleged payments towards his debts. He is credited with negotiating a payment plan to resolve the credit-card debt alleged in SOR ¶ 1.e. However, he did not demonstrate that he initiated good-faith efforts to repay or otherwise resolve his student-loan debts. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

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 Guideline F in my whole-person analysis, and I have considered the factors AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated trustworthiness concerns raised by his indebtedness. 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.e:	Against 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