



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



In the matter of:)
)
) ADP Case No. 19-01677
)
Applicant for Public Trust Position)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2020

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the alleged financial considerations trustworthiness concerns. He refuted the alleged personal conduct trustworthiness concerns. National security eligibility to occupy a position of trust is denied.

Statement of the Case

On June 21, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 Adjudicative Guidelines (AG) effective within the DOD for SORs issued after June 8, 2017.

Applicant initially answered the SOR in writing on June 28, 2019 (Answer-1), and asked that his case be decided on the written record. On August 16, 2019, he requested a hearing before an administrative judge and filed Answer-2. On September 24, 2019, he filed additional information pertinent to his answers, which I referenced as Answer-3. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 18, 2019. DOHA issued a Notice of Hearing on January 21, 2020, setting the hearing for February 13, 2020. Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant testified. He did not offer any exhibits or object to the Government's exhibits, and they were admitted into the record. DOHA received the hearing transcript (Tr.) on February 24, 2020.

Procedural Matters:

Prior to the commencement of the case, Department Counsel corrected SOR ¶ 1.b to note that Applicant filed a Chapter 7 bankruptcy in September 2003, and not a Chapter 13. (Tr. 8)

Department Counsel also withdrew the following allegations from the SOR: ¶¶ 1.e, 1.k, 1.n, and 1.o. (Tr. 8)

Findings of Fact

Applicant admitted all of the Guideline F allegations contained in the SOR that remained after the Government's withdrawal of the four mentioned above, except those in SOR ¶¶ 1.c, 1.i, and 1.q, which he denied. (Tr. 10) He denied the Guideline E allegation.

Applicant is 55 years old. He served in the Navy from 1986 to 2006, when he retired and received an honorable discharge as an E-5. He and his first wife were married 24 years and divorced. They have four adult children. He has been married to his second wife for four years. He does not have any children with her. He has three young grandchildren, who live with him and his second wife. In January 2017, he began his current contractor position with the Navy. (Tr. 18-20)

Applicant has a history of financial problems, dating back to when he was in the Navy and applying for a security clearance. During a background interview in January 2004 with a government investigator, he discussed his 2003 Chapter 7 bankruptcy, which he filed to dispose of his debts and avoid a wage garnishment. (GE 4) Subsequently, he was not granted a security clearance. (Tr. 53)

On December 12, 2016, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). In it, he disclosed a 2014 bankruptcy and a delinquent loan. After filing his e-QIP, Applicant was interviewed in June 2018 by a government investigator. During the background interview, Applicant was confronted with additional financial delinquencies listed on a February 2017 credit bureau report (CBR), including

many debts which were owed to credit card companies. He addressed all of the investigator's inquiries. He said he had closed many of the credit card accounts. (GE 7)

Applicant testified that he and his first wife filed a Chapter 7 bankruptcy in 2003. His wife was not working at time, and he did not earn enough money to support her and their four children. According to the bankruptcy documents, he discharged over \$32,500 of debt, which consisted of primarily retail and credit card accounts. (Tr. 23; GE 4, GE 6)

Applicant testified that he filed his 2014 Chapter 7 bankruptcy as a consequence of his divorce from his first wife in 2011. He was still paying child support then and earning a small salary. He thinks the court discharged approximately \$28,000 of delinquent debts in that bankruptcy, which included retail and credit card accounts. (Tr. 23-24: GE 5)

Applicant attributed his present financial problems to several factors: periods of unemployment, including four months before he started his current position; his 2011 divorce from his first wife; providing support for his stepdaughter; and two moves in seven months to accommodate three grandchildren, whom he supports. (Tr. 11-12, 21; Answer -2) After discharging delinquent debts in his 2014 bankruptcy, Applicant said he opened new credit card accounts and used them to pay bills. When the payments on the cards became due, he was unable to pay them. He acknowledged that he made a poor decision in opening those accounts. (Tr. 24-25)

Based on Applicant's admissions and credit bureau reports (CBR) from February 2017 and May 2019, the SOR alleged: two Chapter 7 bankruptcies, in 2003 and 2014; two charged-off automobile loans; and ten delinquent debts, including credit cards. The automobile loans and other debts became delinquent between 2014 and 2018, and totaled \$23,325. (GE 2, GE 3) None of the 12 debts alleged in the SOR have been resolved. (Tr. 60)

Applicant contacted some creditors in the past, but does not have any current payment plans. He said he cancelled many of the cards and no longer uses them. (Tr. 24-25)

Applicant does not have a written budget. His net monthly salary income is about \$3,000. He also receives \$1,500 a month from his military retirement and \$1,600 a month as a VA disability benefit. His wife's monthly income is \$2,400. She uses her salary to support her 36-year-old developmentally disabled daughter, who lives independently. He has not sought financial counseling since 2014, when he filed bankruptcy. Appellant's wife is not involved in managing their household finances. (Tr. 43, 45-46, 61-62)

Applicant said his financial situation has improved since his first wife died in 2018. He no longer pays her part of his military retirement, and his child support payments have stopped as all of his children have reached their majority. He said he has an extra \$1,350 after paying his bills. (Tr. 24, 46)

In response to question Section 26: Financial Record of his e-QIP, Applicant disclosed that he filed bankruptcy in 2014 and had a delinquent loan. He did not disclose any other delinquent debts or the charged-off accounts alleged in the SOR. (GE 1) He testified that he did not read the questions carefully before he answered them. He knew he had some indebtedness. He said the computer he was using was old and not working well. Some of the alleged debts were not delinquent at the time he submitted the SOR, as noted in the summary of his interview. He testified that he did not attempt to deceive the Government by failing to disclose all of his delinquent debts. (Tr. 55-57; GE 1, GE 7)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 applicable guidelines in the context 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for a position of trust seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

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.

AG ¶ 19 describes conditions that could raise trustworthiness concerns. Two may be disqualifying in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Since prior to 2003, Applicant accumulated delinquent debts that he has been unable to resolve. He filed Chapter 7 bankruptcy in 2003 and in 2014, and had debts discharged. He continued to accumulate delinquent debts after discharging debts in his June 2014 bankruptcy. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could potentially mitigate trustworthiness concerns arising from Applicant's financial problems:

- (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 discharged delinquent debts in 2003 and 2014 through bankruptcy. He accumulated 12 delinquent debts since his last bankruptcy, which are ongoing, unresolved, and continue to cast doubt on Applicant's reliability. AG ¶ 20 (a) does not apply.

Applicant attributed some of his current delinquent debts to periods of unemployment, including prior to starting his current position with the Navy; the consequences of his divorce; and providing support to family members. Those may have been circumstances beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He did not provide sufficient evidence to demonstrate that he attempted to responsibly manage his debts as they were accumulating, or evidence of actions he may have taken after each bankruptcy to ensure he managed his finances responsibly. AG ¶ 20(b) applies partially.

Applicant did not provide evidence that he has participated in credit or financial counseling since 2014. He has not established a written budget to show responsible financial management. There is insufficient evidence to conclude that there are clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant did not provide sufficient evidence of good-faith efforts to resolve any of the 12 delinquent debts, or substantiate actions taken to dispute any of the debts. AG ¶ 20(d) and AG ¶ 20(e) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 explains the trustworthiness concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise a trustworthiness concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant acknowledged that he failed to disclose all of his delinquent debts in his 2016 e-QIP, but denied that he attempted to intentionally mislead the Government. He did disclose his 2014 bankruptcy and a delinquent loan. During his 2018 background interview, he answered all questions related to his finances. He testified that he had trouble completing the e-QIP because he was using an old computer. He also noted that some debts were not delinquent at the time he submitted the e-QIP. After listening to his testimony, reviewing his disclosure of some negative information in the e-QIP and the case file, I do not believe that he deliberately concealed financial information from DOD. His omissions may have been careless, but not intentional. AG ¶ 16(a) is not applicable. Personal conduct trustworthiness concerns are concluded for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Overall, the record evidence leaves me with doubts as to Applicant's judgment, reliability, eligibility, and suitability for a position of trust. Based on his long history of financial problems and the lack of an established track record of responsible financial management, he failed to meet his burden to mitigate the trustworthiness concerns raised under the guideline for financial considerations. He refuted those concerns raised under the personal conduct guideline.

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
Subparagraphs: 1.a through 1.d:	Against Applicant
Subparagraph: 1.e:	Withdrawn
Subparagraphs: 1.f-1.j:	Against Applicant
Subparagraph: 1.k:	Withdrawn
Subparagraphs: 1.l-1.m:	Against Applicant
Subparagraphs: 1.n-1.o:	Withdrawn
Subparagraphs: 1.p-1.r:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 Applicant eligibility for a public trust position. National eligibility for access to sensitive information is denied.

SHARI DAM
Administrative Judge