



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



In the matter of:)	
)	
)	ADP Case No. 19-02487
)	
Applicant for Public Trust Position)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2020

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On October 3, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on October 25, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 14, 2019. The evidence included in the FORM is identified as Items 3-6 (Items 1-2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on December 18, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A-C, which

are admitted into evidence without objection. Applicant did not object to the Government's exhibits and Items 3-6 are admitted into evidence. The case was assigned to me on February 6, 2020.

Findings of Fact

Applicant admitted all the SOR allegations, with explanations. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 29-year-old employee of a federal contractor. He has worked for this employer for approximately two years. He is a high school graduate and has completed some college courses. He is single and has no children. He served in the U.S. Air National Guard from 2009 to 2014 and was honorably discharged. (Items 3-4)

The SOR alleged Applicant accumulated seven collection and five charged-off debts totaling approximately \$24,000 (SOR ¶¶ 1.a-1.l). The allegations are supported by his statements to a defense investigator during his background investigation in June 2018, credit reports from August 2017 and January 2019, and admissions in his SOR answer. (Items 2, 4-6)

Applicant attributed his delinquent debts to his life becoming difficult without further explanation. After receiving the SOR, Applicant engaged a debt relief company (DRC) to settle eight of his SOR debts. Four SOR debts totaling \$1,336 were not addressed by the DRC and Applicant provided no further information on their status. Under his DRC plan, Applicant began making \$147.50 bi-weekly payments to the DRC in November 2019. Applicant provided documentation from the DRC showing that as of January 20, 2020, he had a balance of \$555 in his DRC account and two debts had been settled, although the specific settled debts are not identified in the documentation. (Item 2; AE A-C)

Applicant prepared an income and expense statement for the DRC, which showed that he has a monthly income of approximately \$3,600, with monthly expenses of approximately \$3,270, leaving a net monthly remainder of \$330. He did not provide any evidence that he sought financial counseling, other than engaging the DRC. (Item 2; AE A-C)

Policies

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 the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining 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 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

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a trustworthiness concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 12 delinquent debts totaling approximately \$24,000 that remain unpaid. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

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

Applicant's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. Applicant was made aware of his delinquent debts during his background investigation in June 2018, but he failed to address his debts until after he received the SOR in October 2019. He engaged the assistance of a DRC in November 2019 and has made a few payments under that plan. However, his DRC plan fails to account for four SOR debts and Applicant provided no additional information about the status of those debts. He also failed to provide specific information about whether his inability to make timely payments toward his debts was due to circumstances beyond his control. At this point, it is too early to determine whether Applicant will make the required effort to continue his DRC payments and address the four debts not included in the plan. None of the above listed mitigating conditions fully apply.

Conclusion

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge