



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



In the matter of:)
)
 [Redacted]) ADP Case No. 19-02756
)
 Applicant for Public Trust Position)

Appearances

For Government: Nicholas T. Temple, Esq. Department Counsel
For Applicant: *Pro se*

08/12/2020

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for a public trust position is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 26, 2018, seeking eligibility for a public trust position. On January 6, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR), citing trustworthiness concerns under Guideline F. The 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) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

The record does not reflect when Applicant received the SOR. He answered it on February 1, 2020, and requested a decision on the written record without a hearing. He attached a bank statement dated February 1, 2020, to his answer, which I marked as Applicant's Exhibit (AX) A. Department Counsel submitted the Government's written case on March 31, 2020, and sent a complete copy of the file of relevant material (FORM) to

Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He responded to the FORM on June 28, 2020, and submitted a written statement and ten documents marked as Items A through J. I relabeled his ten documents as AX B through K. All of Applicant's documents and the Government's documents were admitted without objection. The case was assigned to me on July 21, 2020.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations and explained what actions he was taking to resolve the delinquent debts alleged in the SOR. His admissions and explanations are incorporated in my findings of fact.

Applicant is 57 years old and is seeking employment by a federal contractor in a public trust position. He was self-employed as a construction worker from August 2006 to September 2009 and has been self-employed as a home-repair service provider from January 2018 to the present. He has never held a security clearance.

Applicant married in April 1987 and separated in March 2013. In his answer to the SOR, he referred to an "ongoing divorce." He has a 32-year-old daughter and a 30-year-old son.

The SOR alleges ten delinquent debts totaling about \$34,325. The debts are reflected in credit reports from December 2018 (FORM Item 4), July 2019 (FORM Item 5), and March 2020 (Form Item 6). The evidence concerning these debts is summarized below.

SOR ¶ 1.a: mortgage loan past due for \$2,225. Applicant obtained a mortgage loan in July 2005. His loan was transferred to another lender and modified in March 2011. (FORM Item 4 at 2-3.) A credit report from July 2019 reflected that his payments were past due for \$2,225. (FORM Item 5 at 1.) In Applicant's answer, he stated that he was paying \$100 per month on this debt. It is not clear from his answer whether he was paying \$100 per month on the first mortgage or the second mortgage on his home. In his response to the FORM, he provided evidence that the debt alleged in the SOR was paid in full in November 2019. (AX B.)

SOR ¶ 1.b: credit-card account charged off for \$13,407. Applicant opened this account in December 2005, and it was charged off in December 2015. (FORM Item 6 at 1.) In his answer to the SOR, he stated that he had begun making monthly \$100 payments on this debt. His bank statement reflected a \$100 payment on January 21, 2020. (AX A at 5.) In his response to the FORM, he again stated that he was paying \$100 per month on this debt, and he attached documentation that he had authorized a one-time payment of \$200 by direct debit from his checking account on June 26, 2020. (AX C.) It is not clear why he documented a \$200 payment in connection with a payment plan calling for \$100. He did not submit documentation of any payments between January and June 2020.

SOR ¶ 1.c: home-improvement store account referred for collection of \$7,565. This debt first became delinquent in February 2015. The first “major delinquency” was in July 2017. (FORM Item 6 at 2.) In Applicant’s answer to the SOR, he stated that he was making monthly \$100 payments on this debt. His response to the FORM included documentation that he had made a payment agreement with the collection agency in October 2019, providing for monthly payments of \$100.07 for 74 months, and that he had made nine monthly payments as of June 2020. (AX D.)

SOR ¶ 1.d: department-store charge account referred for collection of \$4,174. This debt first became delinquent in November 2014, and the first “major delinquency” was in August 2016. Applicant’s bank statement reflected a \$99.36 payment on January 9, 2020. (AX A at 7.) His response to the FORM included documentation that he had made a payment agreement with the collection agency in October 2019 providing for 41 monthly payments of \$99.36 by direct debit from his checking account and that he had made 11 of the agreed monthly payments. (AX E.)

SOR ¶ 1.e: credit-card account charged off for \$3,403. Applicant opened this account in March 2000, and it was charged off in May 2016. In his answer, he stated that he was making monthly \$100 payments to a collection attorney. His bank statement reflected a \$100 payment on January 21, 2020. (AX A at 5.) In his response to the FORM, he stated that he was paying \$100 per month and had reduced his balance to \$2,903. He submitted documentation of a \$200 payment on June 26, 2020. (AX F.) He did not submit documentation of any payments between January and June 2020.

SOR ¶ 1.f: credit-card account charged off for \$1,627. Applicant opened this account in September 2008, and it was charged off in March 2016. (FORM Item 5 at 2.) In his answer to the SOR, he stated that he was making monthly \$100 payments on this debt. His bank statement reflected a \$100 payment on January 21, 2020. (AX A at 5.) His response to the FORM reflects a direct debit of \$200 on June 26, 2020. (AX G.) He did not submit documentation of any payments between January and June 2020.

SOR ¶ 1.g: credit-card account charged off for \$1,410. Applicant opened this account in October 2002, and it was charged off in March 2016. (FORM Item 5 at 2.) In his answer to the SOR, he stated that he was making monthly \$100 payments on this debt. His bank statement reflects a \$100 payment on January 29, 2020. (AX A at 2.) His response to the FORM reflects a cash advance of \$300 on June 26, 2020, which he stated he used to reduce his balance to \$1,010. (AX H.) He did not submit documentation of any payments between January and June 2020. He did not submit any documentation showing that the cash advance was used to make a payment on this debt.

SOR ¶ 1.h-1.j: medical bills placed for collection of \$111, \$239, and \$164. Applicant provided no information about the circumstances in which the medical bills were incurred. In his answer to the SOR, he stated that the three bills were being handled by an attorney and that they were paid in full with a single payment of \$515.39. Applicant’s bank statement reflects a payment of \$515.39 on January 23, 2020. (AX A at 3.) His response to the FORM includes documentation that all three bills were paid in full on January 22, 2020. (AX I, J, and K.)

In Applicant's answer to the SOR, he attributed his delinquent debts to his ongoing divorce and lack of employment. He provided no information about the date on which the divorce proceedings began or the expenses he had incurred regarding them. He provided no information about his dates of unemployment. He provided no specific information about his income and expenses, and no evidence of financial counseling. His bank statement reflected that he had \$299.73 in his checking account as of January 8, 2020, and \$1,593.18 as of January 31, 2020. (AX A.) In his cover letter for his response to the FORM, he stated, "I am trying to be debt free in about 20 months."

Policies

The standard set out in the adjudicative guidelines for assignment to sensitive duties is that 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. SEAD 4 ¶ E.4. 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 adjudicative guidelines. 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. Under AG ¶ 2(b), any doubt must 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 access to sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness 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. . . . 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence in the record 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").

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; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's marital breakup and lack of employment were conditions beyond his control. However, he presented no evidence showing that they predated and were a substantial cause of his delinquent debts. He submitted no

evidence showing the circumstances in which the medical debts were incurred. He provided no information about the dates and duration of his periods of unemployment. Even if some of these circumstances predated and contributed to his delinquencies, he did not act responsibly. He made payment agreements for the debts alleged in SOR ¶¶ 1.c and 1.d in October 2019, and he resolved the delinquent mortgage debt in November 2019, but he did not begin making payments on any of the other debts until after the SOR was issued on January 6, 2020. He made payments on the debts alleged in SOR ¶¶ 1.c and 1.d on January 9, 2020, only three days after the SOR was issued, and it is not clear whether he had received the SOR when he made these payments. However, he did not make payments on the debts alleged in SOR ¶¶ 1.e-1.j until well after he SOR was issued and shortly before he answered it. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a public trust position. See, e.g., ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(d) is established for the delinquent debt alleged in SOR ¶ 1.a, which Applicant resolved before he received the SOR. It is also established for the delinquent debts alleged in SOR ¶¶ 1.c and 1.d, for which Applicant made payment agreements before receiving the SOR. It is not established for the delinquent debts alleged in SOR ¶¶ 1.b and 1.e-1.j. He submitted documentary evidence of only two payments, in January and June 2020, on the debts alleged in SOR ¶¶ 1.b, 1.e, and 1.f and only one payment in January 2020 on the debt alleged in SOR ¶ 1.g. He paid the medical debts alleged in SOR ¶¶ 1.h-1.j in January 2020. Most of his debt payments on the debts alleged in SOR ¶ 1.b and 1.e-1.j were made after the SOR was issued. Payment in response to the pressure of qualifying for a public trust position does not constitute “good faith” within the meaning of this mitigating condition.

A public trust 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.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant is carrying out a payment plan to resolve the debts in SOR ¶¶ 1.c and 1.d, and he has resolved the debts in SOR ¶¶ 1.a and 1.h-1.j. He has made intermittent payments on the debts alleged in SOR ¶¶ 1.b-1.g. However, the mitigating impact of his actions to resolve his delinquent debts is undermined by the fact that he did not begin to make payments on the debts alleged in SOR ¶ 1.b and 1.e-1.j until he realized that his delinquent debts were an impediment to obtaining a public trust position. Because of the minimal information he has provided about his current income and expenses, I am not convinced that he has the financial resources to carry out his declared intention to make monthly \$100 payments on all the unresolved debts, nor am I convinced that he will continue his efforts once the pressure of qualifying for a public trust position is removed.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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(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 applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). He provided no information about his current financial situation, making it impossible to determine whether he will be able to carry out his stated plan of making monthly payments on the unresolved debts.

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 not mitigated the trustworthiness concerns based on financial considerations. While he has made some progress in resolving in delinquent debts, he has not yet established a track record of financial responsibility. Once a concern arises regarding an applicant's eligibility for a public trust position, there is a strong presumption against granting eligibility. See ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). I am obligated by AG ¶ 2(b) to resolve any doubt about Applicant's suitability for a public trust position in favor of national security. I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

Formal Findings

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

Subparagraphs 1.a, 1.c, and 1.d: For Applicant

Subparagraphs 1.b and 1.e-1.j: 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 a public trust position is denied.

LeRoy F. Foreman
Administrative Judge