



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



In the matter of:)	
)	
)	ADP Case No. 19-03085
)	
Applicant for Public Trust Position)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro Se*

08/26/2020

Decision

CERVI, Gregg A., 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 a questionnaire for national security positions (SF-86) on April 2, 2019. Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data processing (ADP) position. On January 3, 2020, 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) effective on June 8, 2017.

Applicant answered the SOR on February 29, 2020 (Ans.), and requested a decision based on the written record without a hearing. The Government’s written brief with supporting documents, known as the file of relevant material (FORM), was submitted

by Department Counsel on April 6, 2020. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM on May 5, 2020, but did not submit a reply. The case was assigned to me on July 21, 2020. Government Exhibits (GE) 1 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant is a 58-year-old executive administrative assistant for a defense contractor, employed since April 2019. He was unemployed from November 2018 until April 2019, and previously unemployed from December 2016 to August 2017 and July 2014 to January 2016. He was married from 1985 and separated in January 1987. Applicant served on active duty in the U.S. Army for 10 months from 1981 to 1982, and in the Army National Guard from September 1985 to December 1991.

The SOR alleges Applicant failed to file his 2014 state income tax return and owes the state approximately \$800 for unpaid taxes, and has six other collections accounts totaling approximately \$32,298. Applicant admitted the SOR allegations and responded, “[o]nce I return to work, I will consolidate all my bills.” (Ans.)

In reference to his delinquent tax debt, Applicant stated in his interview with a government investigator, that he made payment arrangements while he was employed to satisfy the state tax debt, but when he was laid off, he was unable to meet his obligations. He also said that state garnished his bank account, so whenever funds are available, they deduct a portion to be applied toward his debt. He believed he still owed about \$540 toward his state tax debt.

Applicant also had a vehicle repossessed in 2015, and owes about \$22,000. (SOR ¶ 1.c) He was evicted from an apartment in 2014, and owes about \$7,736. (SOR ¶ 1.e) He owes phone and cable providers about \$1,121. (SOR ¶¶ 1.d and 1.f) A gym company is collecting approximately \$259, and a medical provider is collecting approximately \$654. (SOR ¶¶ 1.h and 1.g)

Applicant did not provide documentary evidence showing payments on any of his debts, payment arrangements, or other efforts to resolve his delinquent accounts. There is no evidence of his current income, savings, overall financial status, or any financial counseling received.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. The standard that must be met 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.” Regulation ¶ C6.1.1.1. DOD contractor personnel are

entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Under AG ¶ 2(b), "[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 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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 noted his inability to pay his delinquent debts was because of his periods of unemployment, including his most recent job loss in 2018. However, despite his intent to address his debts once he was re-employed, he has not shown any efforts or progress toward resolving any of his debts. Despite his claim to have involuntarily paid toward his state tax debt, he has not shown documentary evidence of such payments, nor is there evidence that his 2014 state tax return was filed.

Promises or plans for future debt resolution are insufficient to apply mitigation credit for responsible actions or good-faith efforts. There is no evidence of financial counseling, and there is insufficient assurance that his financial problems are being resolved and will not recur in the future. Overall, Applicant has shown insufficient efforts to resolve debts, despite employment since April 2019. No mitigating condition applies.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), 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. Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F, in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

Formal Findings

Formal findings for or against Applicant 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
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Subparagraphs 1.a – 1.h:	Against Applicant
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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.

Gregg A. Cervi
Administrative Judge