



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



In the matter of:)	
)	
)	ADP Case No. 19-02938
)	
Applicant for Public Trust Position)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/06/2021

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 December 12, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DCSA CAF 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 January 27, 2020, and requested a hearing. Processing of the case was delayed because of COVID-19. The case was assigned to me on March 2, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 14, 2021, and the hearing was held as scheduled on May 18, 2021. This hearing was convened using the Defense Collaboration Services (DCS) video conferencing capabilities. The Government offered exhibits (GE) 1 through 6,

which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A-G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 4, 2021.

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 28-year-old employee of a federal contractor. He has worked for this employer since December 2016. He experienced a period of unemployment while he attended college through September 2013. He is single, never married, and has no children. He has cohabitated with his girlfriend since 2015. (Tr. at 6, 36; GE 1)

The SOR alleged Applicant accumulated ten delinquent (four student loans (\$27,159) and six medical (\$5,183)) debts totaling approximately \$32,342 (SOR ¶¶ 1.a-1.j). The allegations are supported by his disclosures to his trustworthiness application (SCA) in December 2016, statements to a defense investigator during his background investigation in January and February 2018, credit reports from March 2017, May 2019, March 2020, and April 2021, and admissions in his SOR answer. (GE 1-6; SOR Answer)

Applicant attributed his delinquent debts to having to leave college because of a lack of funding in April 2013. He had a semester left but could not afford to continue. He financed his schooling, up to that point, using student loans. He experienced some health issues in approximately 2013, which required hospitalization. In 2015, his girlfriend, with whom he was living, was involved in a serious auto accident. The brunt of paying the couple's bills fell on Applicant. His student loans became delinquent in approximately September 2013. Applicant asserted that his wages have been garnished in the past to pay his student loans and that either his 2019 or 2020 federal income tax refund was captured by the IRS to apply towards his student loans. He failed to document either of these occurrences. He documented making a single \$96 payment toward his student loans in April 2019. He also documented applying for consideration under a student loan rehabilitation program. He discontinued pursuing loan rehabilitation when he determined that the calculated payments under the program would be too much. He has made no further payments or established a payment plan towards his delinquent student loans and believes the current balance is approximately \$30,000. He made a conscious choice to pay other bills before addressing his student loans. These debts remain unresolved. (Tr. at 24-30, 37-38; GE 3-5; SOR Answer (attachments))

Applicant claimed that he made payments toward his medical debts, but he failed to produce supporting documentation. His records show that he made several payments to his girlfriend in March 2021, but these payments cannot be correlated to any SOR debt. The medical debts are unresolved. (Tr. at 31; GE 3-5)

Applicant documented payments toward several non-SOR debts, including paying credit cards, consumer debt, and his car loan. He did not provide any budget or financial counseling information. (Tr. at 39; AE A-G)

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant accumulated ten delinquent debts totaling approximately \$32,000, most of which is from delinquent student loans. He chose not to pay his student loans, but rather address other debts first. I find all disqualifying conditions are raised.

Although President Biden extended a pause on the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-student-loan-payments/>), that action does not excuse previously delinquent student loans. (See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021))

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 has not documented payment towards any SOR debts. While his medical issues in 2013 and his girlfriend's auto accident in 2015 were circumstances beyond his control, he has not shown responsible action toward addressing his delinquent debt. He failed to follow-up on an opportunity to rehabilitate his student loans. He has not provided any specific details about how he plans to address these debts in the future. None of the above mitigating conditions fully apply. However, I am giving Applicant some mitigating credit for paying several non-SOR related debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my

