



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



In the matter of:)
)
) ADP Case No. 20-02654
)
Applicant for a Public Trust Position)

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro se*
12/14/2021

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility to work in a public trust position in the defense industry. Applicant’s financial problems were caused by events beyond his control. From October 2015 to December 2019, Applicant was medically restricted from working by his physicians, and was unemployed for 51 months of that 53-month period. During these periods of unemployment, he incurred the debts alleged in the Statement of Reasons (SOR), which includes a child support arrearage. Since returning to work in December 2019, he has resolved one SOR debt, and is in good standing with his child support order. His request for continued eligibility to occupy a position of trust is granted.

Statement of the Case

On November 20, 2020, the DOD issued an SOR detailing security concerns under the foreign influence guideline. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant public trust eligibility.

Applicant answered the SOR and requested a hearing. At the hearing, convened on August 26, 2021, I admitted as Hearing Exhibits (HE) I and II: the case management order issued on August 3, 2021; and, the discovery letter the Government sent to Applicant, serving him with the documents supporting the Government's case against him, dated February 9, 2021. I also admitted, without objection, Government Exhibits (GE) 1 through 5, and Applicant Exhibits (AE) A through I, without objection. I received the transcript (Tr.) on September 1, 2021. (Tr. 12-15)

Findings of Fact

Applicant, a 39-year-old network engineer, has worked for a federal contracting company since December 2019. He has an associate's degree and multiple information technology certifications. He completed a security clearance application in December 2019. Information developed during the investigation revealed that he has a \$36,379 child support arrearage and a delinquent loan for \$1,502. Both debts are alleged in the SOR.

In 2015, while working out of state, Applicant experienced a medical emergency that required him to leave his job. He was diagnosed with two chronic, degenerative eye diseases and required emergency surgery. In the aftermath of the surgery, Applicant's doctors declared him medically unable to work. His doctor's ordered him to avoid looking at screens. He was ordered to refrain from lifting any object over five pounds to avoid placing any pressure on his eyes. He could not drive and relied on his girlfriend, with whom he has lived since September 2015, for transportation. The medical care after surgery required frequent doctors' appointments and injections in to his eyes to help them heal properly. After the first surgery, he was unemployed from August 2015 to August 2016. Applicant did not like being financially dependent on his girlfriend, so he began looking for employment - against medical advice.

In August 2016, a court ordered Applicant to pay child support for his then eight-year-old son from a previous relationship. Before the child support order, Applicant provided financial support through an informal arrangement with the child's mother. At the hearing, he testified that he did not oppose the formalization of his child support obligation because he considered his duty to provide for his child a priority. Under the terms of the order, Applicant is required to pay \$748 per month in support of his son, and \$100 per month toward \$12,700 arrearage.

Applicant started a network engineering position with a private company in August 2016, but left the position in October 2016, when his eye conditions became acute. He underwent a second surgery in October 2016. As he recovered, Applicant resumed looking for employment. He accepted an IT position with another federal contracting company that required a security clearance. He started the position in December 2016, after being granted an interim security clearance. However, after starting the position, Applicant realized that the job required skills he did not have. In February 2017, Applicant and his employer agreed that he was not a good fit for the position and he was terminated.

In late 2018, Applicant secured a position with another federal contracting company. After a year of unemployment, Applicant decided to take a celebratory vacation with his girlfriend. To pay for the trip, Applicant obtained a loan with the intent of repaying it after he returned to work. (SOR ¶ 1.b) However, Applicant did not start that position because the interim security clearance he had been granted in August 2016 was revoked. As a result, he remained unemployed and could not repay the vacation loan. He remained unemployed from February 2017 to December 2019. He allowed the vacation loan to fall into delinquent status. Unable to file unemployment, Applicant decided to return to school in February 2017. He used proceeds from his student loan refund to pay his child support obligation.

During the 38 months of unemployment Applicant experienced after the August 2016 child support order, he stayed in good standing with the court by enrolling in a program that required him to report his job hunting efforts to the court on an ongoing basis. He did not disclose to the court that he was under medical orders to not work. He applied for social security disability, but was denied twice. Applicant provided a child support payment history from September 2016 to April 2021. Over the 56 months reported in the payment history, Applicant did not make payments for 33 months, with the longest period of non-payment of 14 months between August 2017 and September 2018. He remained in the program until he started his current job.

Applicant was medically cleared to return to work in February 2019. He remained unemployed until he was hired for his current job in December 2019. Since returning to full employment, he has paid off the vacation loan. Applicant has paid his child support obligation through wage garnishment, the required method of payment in Applicant's state of residency, since March 2020.

As for Applicant's health, his eye conditions require ongoing, invasive treatment and may impact his ability to work going forward. Applicant's girlfriend testified at the hearing. She and Applicant handle their finances jointly. She considers him one of the most financially responsible people she knows. She credits Applicant for improving her financial habits and health. The credit report in the record shows that Applicant has a favorable credit history with the two SOR debts being his only derogatory accounts.

Policies

When evaluating an applicant's suitability for a position of trust, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 ¶ 21, 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 access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Failure to meet one’s 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. (AG ¶ 18). Here, the SOR alleges that Applicant owes a \$36,379 child support arrearage (SOR ¶ 1.a) and \$1,502 (SOR ¶ 1.b) for a delinquent loan account. The Government has established its *prima facie* case, and the following disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Applicant’s financial problems were not caused by financial mismanagement, living beyond his means, or reckless or irresponsible behavior. They resulted from events beyond his control, the sudden onset of a medical condition that rendered him medically unable to work from October 2015 to February 2019. Despite these restrictions, Applicant continued to pursue employment opportunities so that he could meet his financial obligations. Despite his best efforts to return to work, Applicant was unemployed for 51 months between October 2015 and December 2019. As a result of his unemployment, Applicant could not meet his child support obligation; however, he took the necessary steps to remain in good standing with the court. Since returning to work in December 2019, he has resolved the vacation loan and is making payments under the child support order as required. The record supports the following mitigating conditions:

AG ¶ 20(b) the conditions that resulted in the financial problems 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.

Based on the record, I have no doubts about Applicant's ability to properly handle or safeguard sensitive information. In reaching this conclusion, I have also considered the whole-person factors in AG ¶ 2(d). Despite the limitations caused by his medical condition, Applicant has demonstrated a determination to honor his financial obligations. His actions suggest that he will follow the rules attendant to handling and protecting sensitive information with the same attention.

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, Financial Considerations FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is granted.

Nichole L. Noel
Administrative Judge