



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ADP Case No. 20-03728  
)  
)  
Applicant for Public Trust Position )

**Appearances**

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

01/10/2022

**Decision**

MALONE, Matthew E., Administrative Judge:

Trustworthiness concerns about Applicant’s financial problems are mitigated by the recent cancellation of all of his student loan debts. However, Applicant did not mitigate the concerns raised by his use of marijuana and his failure to establish that he does not intend to continue that conduct. Applicant’s request for eligibility for a position of public trust is denied.

**Statement of the Case**

On March 26, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for an ADP I/II/III position for his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators at the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) were unable to determine that it is clearly consistent with the interests of national security to grant Applicant’s request

for a position of trust, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On January 25, 2021, the DCSA CAF issued Applicant a Statement of Reasons (SOR) presenting trustworthiness concerns addressed through the adjudicative guidelines (AG) for financial considerations (Guideline F) and drug involvement (Guideline H). The adjudicative guidelines applied by adjudicators were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

On January 29, 2021, Applicant responded to the SOR (Answer) and requested a decision without a hearing. On August 31, 2021, as provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a File of Relevant Material (FORM). The FORM contains seven documents (Items 1 – 7) on which the Government relies to support the factual allegations in the SOR. Applicant received the FORM on September 27, 2021, and was informed he had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.

Applicant timely responded to the FORM (FORM Response). The record closed on October 18, 2021. No objections have been raised to the admission of any of the information proffered herein. I received this case for decision on December 2, 2021.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$28,955 for six delinquent student loans (SOR 1.a – 1.f), and \$416 for three delinquent medical accounts (SOR 1.g – 1.i). Under Guideline H, the Government alleged that in October 2017, Applicant was arrested and charged with possession of drug paraphernalia (SOR 2.a); and that he used marijuana between July 2018 and March 2020 (SOR 2.b). (FORM, Item 1)

In response to the SOR, Applicant admitted, with explanations, each of the allegations. After reviewing the Government's information and Applicant's submissions in response to the SOR and the FORM, I make the following findings of fact.

Applicant is a 32-year-old employee of a company contracted with the federal government to perform duties in support of governmental functions that use and safeguard personally identifiable information (PII). Applicant attended a nationally known technical institute between February 2012 and June 2014, when he received an associate's degree. To fund the tuition for his studies, Applicant obtained the student loans addressed in SOR 1.a – 1.f. The school he attended was later found to have engaged in fraudulent practices that enticed students to borrow too much money for their education. (FORM, Items 3 and 7)

In 2016, the school filed for Chapter 7 bankruptcy and went out of business. Applicant, aware of lawsuits against the school, thought he did not have to repay the loans

and they went into default in 2019. In August 2021, the U.S. Department of Education established a program of debt forgiveness for students of that school. On September 10, 2021, he was notified that his student loans had been forgiven. Those accounts do not appear on the most recent credit report available. SOR 1.a – 1.f are resolved for Applicant. (Response to Form; FORM, Items 3 – 7)

SOR 1.g – 1.i are three medical debts totaling \$416 Applicant incurred during periods of unemployment or under employment. He claims he has repaid those debts, but he has not supported his claims with any corroborating information. Those debts do not appear on the most recent credit report, and they comprise less than one percent of the total debt alleged in the SOR. As the only remaining debts at issue, they do not present a disqualifying trustworthiness concern. SOR 1.g – 1.i are resolved for Applicant. (Response to FORM; FORM, Items 4, 5 and 7)

Applicant disclosed in his e-QIP that has used marijuana with varying frequency starting in 2018. However, during a personal subject interview (PSI) with a government investigator in June 2020, he disclosed that he first used marijuana as often as daily starting in 2007, when he was in high school. His last documented use of marijuana at the time he applied for a position of trust was in March 2020, after he had been employed as a defense contractor for almost two years. A plain reading of the summary of his June 2020 PSI suggests that he continued to use marijuana after he submitted his e-QIP. In October 2017, during a search incident to a traffic stop, he was arrested and charged with possession of drug paraphernalia, to wit, a small pipe used to smoke marijuana. The charge was later dismissed. (FORM, Items 2, 3, 6 and 7)

Applicant occasionally uses marijuana in the privacy of his own home so that he can relax. Marijuana also has a positive effect on his (unspecified) medical problems. As to whether he will continue to use marijuana, he states that he would stop using the drug if he were granted eligibility for a position of trust. In support of his marijuana use, he also refers to the decriminalization of marijuana where he lives and the increasing instances of marijuana decriminalization nationwide. (FORM, Items 2, 3 and 7)

*Sua sponte*, I take administrative notice of the fact that marijuana is a Schedule I controlled substance, the use and possession of which is a criminal violation of federal law. Guidance issued by the Office of the Assistant Secretary of Defense (OASD) in February 2013 makes clear that changes in the laws pertaining to marijuana by the various states, territories, and the District of Columbia do not alter the current National Security Adjudicative Guidelines. Because federal law supersedes state laws on this issue, Applicant’s use of marijuana, regardless of location or medical justification in his state of residence, is illegal. Further, illegal drug use is prohibited in all federal workplaces and on all military installations by civilian federal employees and by persons employed for work on federal contracts.

## **Policies**

Eligibility for a position of public trust must be based on a determination that it is “clearly consistent with the interests of national security” to do grant such access. Each

decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. This decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to sensitive information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke an applicant's eligibility. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a position of public trust, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to sensitive or protected information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any unresolved doubt about an applicant's suitability for eligibility in favor of the Government. (See Egan; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

The Government's information supported the SOR allegations that Appellant accrued more than \$29,000 in delinquent or past-due debt, 99 percent of which was comprised of delinquent student loans. These facts reasonably raised some of the trustworthiness concerns stated, in relevant part, at 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.

In response to the Government's information, Applicant established that his student loans were discharged in August 2021. Moreover, his three remaining medical debts total less than \$500. As such, they present only a *de minimus* trustworthiness issue. The record as a whole does not present a viable case for disqualification under this guideline. Accordingly, the trustworthiness concerns about Applicant's financial considerations presented in the SOR are resolved for Applicant.

### **Drug Involvement and Substance Misuse**

Applicant has illegally used marijuana since 2007. He also was arrested for misdemeanor possession of drug paraphernalia in 2017. This information reasonably raises a trustworthiness concern that is stated at AG ¶ 24 as follows:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

More specifically, available information requires application of the following AG ¶ 25 disqualifying conditions:

- (a) any drug abuse (see above definition);
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant has used an illegal, controlled substance for over 14 years and was found to be in possession of drug paraphernalia in 2017. He appears to understand that this conduct is inconsistent with occupying a position of trust for work in support of a federal contract. Nonetheless, he has not definitively stated that he has or will discontinue

using marijuana. Instead, Applicant has conditioned his future intent in this regard on whether he receives eligibility for a position of trust.

I also have considered the following pertinent mitigating conditions under AG ¶ 26:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Department Counsel presented sufficient evidence to support the SOR allegations and raise security concerns under this guideline. It thus fell to Applicant to present information that warrants application of any pertinent mitigating conditions. In response to the SOR and the FORM, Applicant did not present information that would support any of the aforementioned mitigating conditions. His use of marijuana occurred within the past two years and while he has been employed by the sponsor for his request to occupy a position of trust. As for future intent, as noted above, he has not definitively stated that he will discontinue his illegal drug use. Applicant did not present any information in support of any of the AG ¶ 26 mitigating conditions and he has not mitigated the trustworthiness concerns established by the Government's information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guidelines F and H, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). The concerns about Applicant's financial problems are resolved in his favor; however, significant doubts about his suitability for a position of public trust remain because of his use of marijuana. The protection of the national interest is the principal goal of these adjudications. Accordingly, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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: | FOR APPLICANT     |
| Subparagraphs 1.a – 1.i:  | For Applicant     |
| Paragraph 2, Guideline H: | AGAINST APPLICANT |

Subparagraphs 2.a – 2.b:           Against Applicant

**Conclusion**

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to sensitive information. Applicant's request for eligibility for a public trust position is denied.

MATTHEW E. MALONE  
Administrative Judge