



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



In the matter of:)
)
) ADP Case No. 20-01093
)
Applicant for Public Trust Position)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant provided sufficient information to mitigate trustworthiness concerns under Guideline F, financial considerations by establishing that most of his consumer debts have now been paid and his student loans are in good standing. Applicant's eligibility for access to sensitive information and for a position of public trust is granted.

Statement of the Case

On July 30 2019, Applicant submitted a questionnaire for national security positions (application), seeking eligibility for a public trust position and access to national security sensitive information, in connection with his employment in the defense industry. On March 12, 2021, following a background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging trustworthiness concerns under Guideline F, financial considerations. The DOD issued the SOR under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 17, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 3, 2021. On January 14, 2022, DOHA issued a notice scheduling the hearing for February 10, 2022. The hearing was to take place through use of an on-line platform.

The hearing initially convened as scheduled. Both sides presented exhibits and Applicant began his testimony. However, the quality of the video feed was poor, and the audio connectivity was sporadic, leading to several disconnections. This was sufficiently disruptive that, with mutual consent, I suspended the February 10 hearing during Applicant's testimony, and resumed the hearing in person on February 22, 2022. I note that the in-person hearing afforded me an appropriate opportunity to observe Applicant's demeanor and assess his credibility.

During the first hearing, Department Counsel submitted Government's Exhibits (GE) 1 through 5. Applicant objected to GE 2, a credit report, on grounds of inaccuracy, but the objection was overruled. (Tr. 19) The remaining Government Exhibits were admitted without objection. Applicant submitted Applicant's Exhibits (AE) A through M, all admitted without objection. (AE A through AE I had been submitted previously, along with his answer.) Applicant also testified. His testimony resumed at the start of the second hearing. He also submitted six additional exhibits, which were marked together as AE N and admitted without objection. I held the record open to allow Applicant the opportunity to submit additional documentation. With an e-mail (AE O), he submitted additional documents: AE P (regarding his student loans with creditor A); AE Q (student loans with creditor N); AE R (student loans with creditor NN); AE S (DD-214); and AE T (rating decision from the VA) that are marked as noted and admitted without objection. DOHA received the first transcript (1Tr.) on February 18, 2022 and the second transcript (2Tr.) on March 1, 2022. The record closed on March 4, 2022.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the alleged debts (SOR ¶¶ 1.a - 1.p) with explanations and some documents. His explanations are incorporated into my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 41 years old. He and his wife separated in April 2015. She is a citizen and resident of a European country. He has no children. (1Tr. 36, 44; 2Tr. 34) He earned a bachelor's degree while in the U.S. Air Force and took some later courses but has not earned a further degree. (1Tr. 37)

Applicant served in the Air Force from 2004-2011 as an intelligence analyst, with a Top Secret/SCI clearance. He was discharged honorably as an E-5. (1Tr. 10, 39-41;

2Tr. 32-33; GE 1 at 24; AE S) After leaving the Air Force in December 2011, he moved to Europe and attempted to gain employment as a U.S government contractor. (1Tr. 41) He worked for about six months at a mall on a U.S. military base there (December 2011-May 2012). He was then unemployed for the rest of 2012, after returning to the United States. (GE 1 at 20) He worked for several months in 2012 as a sales representative for a cereal company, before being laid off in July 2013. He was then unemployed for about two months. (GE 1 at 18-19; 1Tr. 42-43)

Applicant then worked for a defense contractor as a data analyst from September 2013 to September 2015, before he was laid off. He was then unemployed for most of the next two years, until June 2017. (1Tr. 43-44; GE 1 at 18) From then until beginning his current job, he worked several federal contractor jobs, interspersed with periods of unemployment. (1Tr. 44-46; GE 1 at 15-18) His prior position, with a federal contractor, was under a six-month contract (Sept. 2019-February 2020), at the equivalent of \$90,000 annually. (1Tr. 37-38)

Applicant has worked for his current employer since February 2020. He has an annual salary of \$92,400. He is a data analyst working with veterans' healthcare data. (2Tr. 25, 39-40) He also receives \$1,500 in veteran's disability insurance due to a 70% service-connected disability rating, including for post-traumatic stress disorder (PTSD). (2Tr. 25-26, 38; AE T) Applicant is in related counseling. (2Tr. 39)

Applicant's mother died tragically in a house fire in September 2013. He also had difficulty dealing with his marital separation in 2015, which led to depression and anxiety. He acknowledged, however, that his debts are largely due to his own mismanagement and financial irresponsibility, though it was during "a very dark, difficult period in [his] life." (1Tr. 34-36, 44, 49, 2Tr. 35-36, 48)

The delinquent debts alleged in the SOR include about \$49,500 in student loans (SOR ¶¶ 1.a-1.c, 1.f, 1.o, 1.p); credit-card debts of about \$22,000 (SOR ¶¶ 1.d, 1.e, 1.g, 1.h, 1.i, and 1.j), along with smaller phone (SOR ¶ 1.k, for \$155) and medical debts (SOR ¶¶ 1.l, 1.m, and 1.n, for about \$700 total). Applicant denied all the debts in the SOR but clarified at his hearing that he acknowledges responsibility for them though many are now paid. (1Tr. 47-48) The debts are established by the credit reports in the record. (GE 2, GE 3, GE 4)

Applicant testified that once his employment stabilized, he contacted the student loan creditors to renew payments in about September 2019. Between then and March 2020, Applicant made six or seven monthly payments of \$416 to rehabilitate his student loans. (1Tr. 46-53) They are all now considered rehabilitated and no longer delinquent. (2Tr. 29-31; AE A, AE N-AE R) A January 2022 credit report shows that Applicant's student loans are in "pays as agreed" status. (AE M at 29-83) He estimated that he owes about \$70,000 in student loans, both public and private. He is making payments on his private loans and his federal loans are in COVID-related forbearance. (2Tr. 36-38) Applicant intends to resume payments on those plans once the forbearance period ends. (2Tr. 31-32, 36-38; AE B) While this case was pending a decision, President

Biden extended this forbearance period through August 2022. (See <https://studentaid.gov/announcements-events/covid-19>).

SOR ¶ 1.d (\$7,907) is a charged-off credit-card account with a bank that caters to military personnel. The account has been settled as of May 2021. (1Tr. 53-57; AE K; Answer) A January 2022 credit report shows no balance due. (AE M at 21)

SOR ¶ 1.e (\$6,537) is a charged-off credit-card account. Applicant settled the account in May 2021, when he received the SOR. (1Tr. 57-59; AE D) A January 2022 credit report shows no balance due. (AE M at 17)

SOR ¶ 1.g (\$4,817) is a charged-off credit-card account. Applicant settled the account in May 2021, when he received the SOR. (1Tr. 59-61; AE E) A January 2022 credit report shows no balance due. (AE M at 13)

SOR ¶ 1.h (\$2,278) is a charged-off account with a credit union. Applicant settled the account in May 2021, when he received the SOR. (1Tr. 61; 2Tr. 9-12; AE F) A January 2022 credit report shows no balance due. (AE M at 4)

SOR ¶ 1.i (\$333) is a debt placed for collection. Applicant settled the account in April 2021. (2Tr. 12-16; AE G)

SOR ¶ 1.j (\$279) is a credit account with a department store. Applicant paid this account in April 2021. (2Tr. 16-18; AE H) A January 2022 credit report shows no balance due. (AE M at 7)

SOR ¶ 1.k (\$155) is an account placed for collection by a phone company. It has been paid in full. (2Tr. 12-16, 19-21; AE I) A January 2022 credit report shows no balance due. (AE M at 103)

SOR ¶ 1.l (\$497) is a past-due medical debt owed to an unidentified creditor. The account has been paid. (2Tr. 21-24; AE L, GE 4 at 9)

SOR ¶¶ 1.m (\$95) and 1.n (\$100) are also past-due medical debts. They are reflected on Applicant's 2019 credit report, though they are not identified and no contact information is provided. (GE 4 at 9) He does not recognize them. (2Tr. 21-25, 29)

Applicant has not participated in credit counseling. (2Tr. 25) He estimated that after expenses, he is now able to save about \$3,000 to \$3,500 a month. (2Tr. 40-41) He submitted a May 2021 bank statement for a checking account showing a balance of about \$20,000. (AE C)

Applicant's direct supervisor provided a reference letter. He attested that Applicant is a proactive and positive asset to the organization who performs "exceedingly well." He recommends that Applicant be found eligible for a position of public trust so he can continue in his employment with the company. (AE J)

Policies

It is well established that no one has a right to a security clearance, or, as here, a trustworthiness determination. As the Supreme Court noted in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), “the clearly consistent standard indicates that security [and trustworthiness] determinations should err, if they must, on the side of denials.”

When evaluating an applicant’s suitability for a position of public trust, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

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 not drawn 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations 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. 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 security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

AG ¶ 19 provides conditions that could raise financial trustworthiness concerns. The following are applicable, given the established evidence of Applicant's history of delinquent student loans and credit-card debts:

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

Two debts are not established. The small medical debts at SOR ¶¶ 1.m and 1.n, which Applicant denied and said he does not recognize, are listed on a 2019 credit report but are not sufficiently identified so that he can attempt to resolve them. As medical debts, they are also likely attributable to a reasonable circumstance even if properly identified. I resolve them for Applicant.

The financial considerations guideline also includes potentially applicable mitigating conditions, under 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;

(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

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

Applicant incurred student-loan debt while pursuing a college degree and some later studies. He experienced several years of employment instability after leaving the Air Force. He incurred credit-card debts for living expenses, and by his own admission, he was financially irresponsible. His mother died suddenly and tragically in a house fire, and he experienced depression and anxiety related to his separation from his wife. He is also a disabled veteran with PTSD, and is in counseling. These factors are given some consideration under AG ¶ 20(b) even though, as Applicant acknowledges, his debts are largely due to his negligence and financial irresponsibility.

Applicant has been gainfully employed, with an annual salary of about \$90,000, since late 2019. Once he regained stable employment, he rehabilitated his student loans in good faith. AG ¶ 20(d) therefore has some application. He is now making payments on his private loans and intends to renew payments on his federal loans once the COVID-19 forbearance period ends. He did not responsibly address his consumer debts until after receiving the SOR, but he documented that he has paid or settled all of those debts. He is in a more financially stable position going forward and has a responsible plan to address his remaining student loan debt. AG ¶ 20(a) therefore applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance or position of public 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):

(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 a position of public trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's prior service to the country, in the Air Force, in the intelligence field, with a Top Secret/SCI clearance, as well as his status as a service-connected disabled veteran. While this is not dispositive, it is whole-person evidence that weighs in his favor. Applicant also documented the payment and resolution of many of his debts, and showed that his financial situation has improved along with his stabilized employment, as has his acceptance of his financial responsibilities. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for access to sensitive information.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.p:	For Applicant

Conclusion

In light of all of the circumstances, presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant's access to sensitive information. Eligibility for access to sensitive information and a position of public trust is granted.

Braden M. Murphy
Administrative Judge