



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



In the matter of:)
)
 _____) ADP Case No. 19-03599
)
 Applicant for Public Trust Position)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*
04/11/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for a public trust position. Applicant presented evidence sufficient to explain, extenuate, or mitigate the trustworthiness concern stemming from his problematic financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on June 11, 2019. On May 4, 2020, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), detailing trustworthiness concerns under Guideline F for financial considerations. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, Security Executive Agent Directive (SEAD) 4, *National Security Adjudication Guidelines* (AG), effective within the Defense Department on June 8, 2017, apply here. The SOR detailed the factual reasons for the action under the guideline known as Guideline F for financial considerations. Applicant answered the SOR on August 2, 2021, and requested a decision based on the written record without a hearing.

The Government submitted a file of relevant and material information (FORM), which included eight items of evidence (Items). The FORM was sent to Applicant on September 17, 2021, who received it on October 12, 2021. Applicant responded to the FORM on November 8, 2021 (Response). Items 1 and 2 (SOR and Answer) are the pleadings in this case. Items 3 through 8 and the Response are admitted into evidence without objection. The case was assigned to me on December 2, 2021.

Findings of Fact

Applicant is 33 years old and a high school graduate who has taken some college courses. He has never married and has no children. He joined the U. S. Army in 2009 but was discharged under other than honorable conditions in January 2011, due to his failure to meet three required reserve evolutions. Applicant missed those evolutions due to financial and transportation issues. In each instance, he notified his unit that he would be unable to attend, because of circumstances beyond his control. Those absences were the cause of his discharge. (Item 5.) From the date of Applicant's discharge in January 2011 to January 2013, he was unemployed. In about 2012, during his unemployment, he fell behind on the payments of some of his debts. (Item 5.) Applicant is seeking to obtain eligibility to occupy a position of public trust, because his sponsor provides services to the Department of Defense, and his job would involve access to sensitive but unclassified information. (Item 3.)

Under Guideline F, the SOR alleged 11 delinquent debts totaling \$27,667. SOR ¶¶1.a. through 1.g. are education loans totaling \$26,346. (Item 1.) Applicant's Answer and Response admitted those debts. Those loans have been consolidated and that he is current on monthly payments paying down those loans. Those payments range between \$128 in January 2020 and \$117 in May 2021. Applicant provided documents supporting that assertion. His payments began before the SOR was issued in May 2020. (Item 3 and Response.)

Applicant denied SOR ¶¶1.h. through 1.k., which total \$1,321. He stated that he disputed those debts, thereby causing them to be removed from his credit reports. (Item 3 and Response.) The Government's most recent credit reports in the record (December 2019 and September 2021) support that assertion; those four SOR debts do not appear on those reports. (Items 7 and 8.) Applicant did not provide any documents of his own to support his assertion. The SOR debts became delinquent between June 2016 and June 2019. (Items 6 and 7.)

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(c), 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 [sensitive] information will be resolved in favor of national security."

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Discussion

Guideline F – Financial

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

The overall concern is:

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. AG ¶ 18.

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

Potentially Disqualifying Factors

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

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

Potentially Mitigating Factors

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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The evidence supports a conclusion that Applicant has had problematic financial conditions sufficient to raise a trustworthiness concern under Guideline F. He appears to have been unable to satisfy his debts, and he has a history of not meeting his financial obligations. Therefore, AG ¶¶ 19(a), and (c) apply. The next inquiry is whether any of the mitigating conditions apply.

The debts that raised trustworthiness concerns were delinquent when the SOR was issued in May 2020 and remained in arrears when the FORM was filed. Those debts were neither infrequent, nor did they occur long ago. Therefore, AG ¶ 20(a) does not apply.

Applicant cites his period of unemployment following his discharge from the Army as a factor in causing him to fall behind in payments on his debts. In turn, Applicant claims that his discharge from the Army was caused by financial and transportation problems that were beyond his control. The Government's evidence does not rebut those claims.

The inquiry under AG ¶ 20(b), however, does not end there. Applicant does not offer proof of how he responded responsibly to the adverse circumstances he confronted about his debts. Accordingly, AG ¶ 20(b) does not apply.

In his Response, Applicant submitted documents that he has been on a monthly plan to defray his student loan debts. His documents show that on one plan started in 2018, he was “never late.” Another plan shows that he has been current since January 2020. Both plans apparently were started before the SOR was issued in May 2020. AG ¶ 20(d) applies, and I find for Applicant on SOR ¶¶1.a. through 1.g.

SOR ¶¶1.h. through 1.k. remain to be addressed. Applicant denied those four debts, which he has disputed. They total \$1,321, which is less than 5% of the total SOR debts. Since Applicant mitigated 95% of the SOR debts, I conclude that the remaining four debts do not present a national security concern. Accordingly, I find in favor of Applicant on SOR ¶¶1.h. through 1.k.

Conclusion

The record does not create doubt about Applicant’s trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the “whole-person” concept. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors).

Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the interest of national security to grant him eligibility for access to sensitive information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.k: For Applicant

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Philip J. Katauskas
Administrative Judge

