



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



In the matter of:)	
)	
)	ADP Case No. 20-03458
)	
Applicant for Public Trust Position)	

Appearances

For Government: Brittany White, Esq.
For Applicant: *Pro se*

06/01/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concern generated by his delinquent debts. Clearance is denied.

Statement of the Case

On May 7, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant public trust eligibility. The DOD CAF took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On May 21, 2021, Applicant answered the SOR, denying all of the allegations, and requesting a decision based on the record without a hearing. On February 3, 2022, Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government’s argument in support of the SOR. Applicant received a copy of the FORM on February 23, 2022, and was instructed to file any

objections to this information, or to supplement the file within 30 days of receipt. Applicant filed a response on March 7, 2022. On March 14, 2022, the case was assigned to me.

Findings of Fact

Applicant is a 64-year-old married man. He earned a bachelor's degree in 1982 and a master's degree in 1987. Since 2007, he has been working for a company in the avionics industry that he co-founded. (Item 3 at 12)

Applicant failed to file his federal tax returns from 2009 to 2019, as alleged in subparagraph 1.a, and he owes a \$28,551 delinquency for tax year 2009, as alleged in subparagraph 1.c. As of March 2021, Applicant had two delinquent consumer accounts, collectively totaling approximately \$10,000, as alleged in subparagraphs 1.d and 1.e.

Applicant attributed his financial problems to the struggles of his business, which he contends generated minimal income over the years. As his business struggled, he turned to credit cards to make ends meet. (Item 4 at 7) He attributes his failure to file his income tax returns to his inability to manage their complexity. (Item 4 at 13) He contends that he is paying the 2009 delinquency through a payment plan (Item 4 at 11), but provided no supporting documentation.

Per SOR subparagraph 1.b, Applicant did not file state tax returns for tax years 2009 through 2019. In Applicant's home state, the only income subject to taxation is that which derives from dividends and interests from bonds and debt notes. (State X §77.4) Applicant contends that during the years that he struggled financially, he did not have enough investment income, as defined under the state statute, to meet the threshold for filing state income tax returns.

The consumer debt in subparagraph 1.d totals \$3,816. By April 2021, Applicant had satisfied this debt through monthly payments of \$243. (Reply to FORM at 5)

As of February 2022, the balance of the debt set forth in subparagraph 1.e, was \$6,833. (Reply at 1) Applicant contends that he has been satisfying this debt through a payment plan since November 2020. (Reply at 1) He provided proof of one payment made in February 2022.

Policies

When evaluating an applicant's eligibility to work in a public trust position, 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 required to be considered 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 overall 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 ¶ 1(d) 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. 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.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s failure to file federal income tax returns from 2009 to 2019, and his outstanding delinquency for tax year 2009, triggers the application of AG ¶ 19(f), “failure to file or fraudulently filing annual, federal, state, or satisfy local income tax returns, or failure to pay annual federal, state, or local income tax as required.”

Under state law where Applicant lives, citizens are only required to pay a percentage of their state income tax that is comprised of interest and dividend income, not ordinary income. Given Applicant's financial struggles, his contention that he did not generate enough interest or dividend income to meet the tax filing requirement is credible. I resolve SOR subparagraph 1.b in his favor.

As for the remaining SOR allegations, the following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 . . . 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant contends that his financial problems stemmed from his struggling business, but did not elaborate. He provided no proof that he is paying the 2009 federal income tax delinquency, and scant evidence that he is satisfying the debt alleged in subparagraph 1.e. Under these circumstances, none of the mitigating conditions apply. Applicant has not mitigated the financial considerations security concerns.

Whole-Person Concept

There is insufficient whole-person information on file that I could conceivably weigh in Applicant's favor. Under these circumstances, I conclude Applicant has failed to mitigate the financial considerations security concerns.

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:

AGAINST APPLICANT

Subparagraphs 1.a – 1.e:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility is denied.

Marc E. Curry
Administrative Judge