



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 21-00882
)
Applicant for Public Trust Position)
)

Appearances

For Government: Bryan Olmos, Department Counsel
For Applicant: *Pro se*

06/24/2022

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of delinquent debt that began prior to 2002 when he filed his first Chapter 7 bankruptcy and continues into the present. He failed to mitigate the trustworthiness concerns raised under Guideline F, Financial Considerations. Eligibility for a public trust position is denied.

Statement of Case

On September 21, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 1, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations.

On December 27, 2021, Applicant responded to the SOR in writing and elected to have his case decided on the written record in lieu of a hearing. (Item 2.) On February 8, 2022, Department Counsel prepared a File of Relevant Material (FORM), containing 11

Items, and mailed it to Applicant. Applicant received the FORM on March 4, 2022, and had 30 days from its receipt to file objections and submit additional information.

Applicant did not submit any additional documents or file objections to the Government's evidence; hence, Items 1 through 11 are admitted into evidence. On May 13, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

The SOR alleged two Chapter 7 bankruptcies, three unpaid judgments, and two charged-off debts. Applicant admitted all seven allegations. (Item 2.) His admissions are incorporated into these findings.

Applicant is 51 years old and unmarried. He graduated from high school in 1989. He lives with a woman with whom he has a child. In July 2020, he began a position as a warehouse specialist with a defense contractor. He has been employed since 2008, but has not earned sufficient money to pay his bills, which lead to financial difficulties and delinquencies. (Items 3 and 4)

In May 2002, Applicant filed his first Chapter 7 bankruptcy petition. It was discharged in September 2002. (Item 5) The amount of debt discharged is not in this record. In October 2016, Applicant filed his second Chapter 7 bankruptcy petition. In February 2017, the court discharged \$30,732 of debt. (Item 6)

Subsequent to the February 2017 discharge of debts, two judgements were entered against Applicant in July 2019, one for \$581 and one for \$499. A judgment for \$3,971 was entered in February 2021. (Items, 7, 8, and 9) In January 2020, his vehicle was involuntarily repossessed, resulting in a charged-off debt for \$14,264. In August 2020, a personal loan was charged off in the amount of \$4,051. These debts total about \$19,400. None of them have been resolved or are being addressed.

According to a budget Applicant submitted with his 2016 Chapter 7 bankruptcy petition, his net monthly income was \$1,172 and expenses were \$2,166, resulting in a \$994 monthly shortage. (Item 6 at 40-43) During his October 2020 background interview, Applicant told the investigator that his financial situation had improved since he became employed with the defense contractor in 2020. (Item 4 at 5) Applicant did not submit a more current budget or documentation that he obtained credit or financial counseling or sought assistance for addressing and managing his delinquent debts.

Policies

The national security eligibility action was taken 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 *National Security Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's eligibility to hold a sensitive position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 AG ¶ 2(a), describing 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." 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 avoided drawing 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, 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 as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information seeks to enter 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Applicant has a history of being unable to satisfy financial obligations, which includes a Chapter 7 bankruptcy in May 2002, and another Chapter 7 bankruptcy in October 2016. His financial problems continue to date, as documented by unpaid judgments and charged-off accounts. The evidence raises both disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant failed to demonstrate that his ongoing delinquent debts are unlikely to continue or recur, or that his reliability and trustworthiness is not in question. AG ¶ 20(a) does not apply. He provided some evidence that his financial delinquencies may have occurred as the result of periods of unemployment or underemployment, which may have been circumstances beyond his control. He did not present evidence that he attempted to manage his debts during those times. The evidence establishes minimal mitigation under AG ¶ 20(b).

Applicant did not provide evidence that he participated in credit or financial counseling or that he developed a reliable plan to resolve the debts. The record indicates that his debts are not under control. AG ¶ 20(c) does not apply. He did not submit evidence that he made a good-faith effort to resolve the outstanding judgments or debts, he accrued after discharging over \$30,000 of debts in February 2017 through bankruptcy. AG ¶ 20(d) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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(a):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a 51-year-old man, who has a history of financial delinquencies that began prior to 2002 when he filed his first Chapter 7 bankruptcy and continues into the present. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position, as he has not established a reliable record of resolving his delinquent debts and demonstrating responsible judgment. For these reasons, I conclude Applicant did not meet his burden to mitigate the trustworthiness concerns arising from his financial problems.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.g: | Against Applicant |

Conclusion

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

SHARI DAM
Administrative Judge