



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



In the matter of:)
)
)
) ADP Case No. 21-01133
)
Applicant for Public Trust Position)

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Pro se

August 12, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to provide sufficient information to mitigate the trustworthiness concerns under Guideline F, financial considerations. Applicant's eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 19, 2019. On December 8, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under the guideline for financial considerations. DOD took the action under Department of Defense 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 June 8, 2017.

Applicant answered the SOR on November 29, 2021, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 5, 2022. DOHA issued a notice of hearing on April 29, 2022, scheduling the hearing for June 15, 2022. The hearing convened as scheduled. Government Exhibits (GE) 1 and 3 through 6 were admitted into evidence without objection. Applicant objected to the admission of an unauthenticated summary of his November 2019 background interview, marked for identification purposes as GE 2. I sustained the objection and the document was not admitted. Applicant testified on his own behalf, but offered no documentary evidence. DOHA received the hearing transcript (Tr.) on June 28, 2022. (Tr. at 13-14, 57.)

Findings of Fact

Under Guideline F, the SOR alleges that Applicant has 13 delinquent debts totaling about \$250,000. He admitted all of the allegations of the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the record evidence, I make the following findings of fact.

Applicant is 36 years old. He has never married and has no children. He earned a medical degree from a foreign university in December 2011. He has worked for a Federal contractor as a medical clerk since March 2020. The pending e-QIP is his first application for a trustworthiness determination. (Tr. at 20-24, 29-32.)

Applicant attended two years of college in the United States studying accounting. He decided to change his career plans, and in 2005, he was accepted to study medicine in a university in Country A. The program involved four years of classwork and one year of practical experience in Country A. He graduated in 2011 as a doctor qualified to practice medicine in that country. He has also received a U.S. certificate on medical coding and billing. He is presently pursuing a master's degree in nutrition in the United States. (Tr. at 23-34, 36-37, 50-52.)

Applicant borrowed the funds to pay for his medical school tuition, which was approximately \$178,000 (see below). These student loans were part of a special program for individuals who held citizenship in both the United States and Country A. Dual citizens like Applicant paid a higher tuition than those students who were only citizens of Country A. After completing his education, he was required to perform one year of "social service" in a small village in Country A. He was paid the equivalent of about \$45 per month. In his e-QIP, he wrote that he worked as an intern in Country A until March 2014. He was actually unemployed from January 2013 to March 2014. He was unsuccessful finding employment in Country A as a doctor, and he returned to the United States. Applicant experienced periods of unemployment in 2016-2017 and again

in 2019. He seeks eligibility for a position of public trust in relation to his employment. (Tr. at 28-36, 51-53; GE 1 at 13-15.)

Applicant does not agree that his student loan debt is as much as alleged in the SOR. He wants to review his borrowing history with his foreign university to have a better understanding of his indebtedness. He has very little information about any of his debts. (Tr. at 26, 42-43, 46.)

According to the record evidence, the current status of the debts listed in the SOR is as follows:

1.a through 1.d. Student loans in collection totaling approximately \$111,000. These four loans were for the tuition expenses for the first four semesters of Applicant's medical school education. They were private loans through a U.S. bank. In 2011 or 2012, the loans became due for repayment, and the creditor started garnishing his paycheck in the amount of about \$70 per month. He requested that the payments cease because he could not afford them. He testified that three or four years ago he called the creditor and explained his financial situation. The creditor decided not to try to seek repayment at that time. Since then he has been unable to make any payments on these loans. They are not presently in deferment or rehabilitation status, and they have been placed for collection. GE 4 reflects that the original amounts of these loans totaled approximately \$79,000. The amounts of the debts have increased due to interest over a period of about ten years. These debts are not resolved. (Tr. at 37-41; GE 3 at 4-5; GE 4 at 1-2; GE 5 at 2-3; GE 6 at 7-8.)

1.e. Credit-card account in collection in the approximate amount of \$1,926. Applicant opened this account to purchase a cell phone. He recalls paying on the account but was subsequently unable to continue the payments. The creditor referred the account to a collection agency. This collection account is for the same credit-card debt as the one listed in SOR 1.m, below. This debt is not resolved. (Tr. at 41-42; GE 3 at 2; GE 4 at 2; GE 5 at 4; GE 6 at 8.)

1.f through 1.i. Student loans in collection totaling approximately \$63,000. These four loans are Direct Loans made by the U.S. Department of Education (DOE). Applicant has never been able to make any payments on these loans. He has never applied to DOE for a deferment or forbearance. He has also never sought to enter into an income-based repayment or a loan-rehabilitation plan. The loans have been placed for collection. GE 4 reflects that the original amounts of these loans totaled approximately \$41,000. These debts are not resolved. (Tr. at 42-64; GE 4 at 3-4; GE 5 at 2-3; GE 6 at 8-9.)

1.j and 1.k. Student loans in collection totaling approximately \$33,000. These two student loans were granted under the Federal Family Education Loan Program (FFEL), which were private loans subsidized and guaranteed by the U.S. Government. Applicant has been unable to make any payments on these loans. He has never applied for a deferment or forbearance. He has also never sought to enter into an income-based repayment or a loan-rehabilitation plan. The loans have been placed in collection. GE 4

reflects that the original amounts of these loans totaled approximately \$17,000. These debts are not resolved. (Tr. at 42-46; GE 4 at 4; GE 5 at 2; GE 6 at 8.)

1.i. Student loan in collection in the amount of approximately \$41,000. This loan was a private loan through the same U.S. bank that provided Applicant with the loans discussed in 1.a through 1.d, above. The credit reports in the record reflect that the \$41,000 amount is the original amount of this loan. The record contains no information regarding the current amount due on this loan. Applicant has been unable to make any payments on this loan, and the loan has been assigned to the U.S. Government as the guarantor of the loan. This debt is not resolved. (Tr. at 46-48; GE 4 at 6; GE 5 at 4; GE 6 at 6.)

1.m. Credit-card account charged off in the approximate amount of \$1,343. Applicant opened this account in January 2015, and he defaulted on paying it in December 2016. The creditor charged off this account and assigned it to a collection agency. Applicant believes this is the same account as the one listed in SOR 1.e, above. The record evidence confirms that the two accounts are for the same debt. The debt amount of \$1,343 is the original charged-off amount. The amount alleged in SOR 1.e (\$1,926) is the more recent amount Applicant owes to the collection agency. (Tr. at 42, 47; GE 3 at 6; GE 4 at 5; GE 5 at 4.)

Based upon the information available in Applicant's credit reports in the record summarized above, Applicant borrowed about \$178,000 for his medical school education during the period 2005 to 2011. With ten years of accrued interest, the current total amount of his student loans is about \$248,000. Applicant has received no financial counseling and has no plan except to investigate the current amounts of the debts he is advised that he actually owes. At this point he cannot afford to repay these debts. He summarized his position on his student loans, stating: "as I see right now it's going to take me forever to repay these back. But I have to do it." (Tr. at 48-49.)

Policies

It is well established that no one has a right to a security clearance, or, as here, to a determination of public trust. 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."

The adjudicative 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 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, 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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. 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 potentially applicable:

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

The record evidence reflects that Applicant borrowed about \$178,000 in student loans. When he completed his foreign medical school education, he lacked the financial means to repay the loans. Now that the loans have been unpaid for over ten years, the total amount of Applicant's student loan debts exceeds \$248,000. Applicant's admissions and the record evidence regarding his unresolved student loans and credit-card debt (SOR 1.e, duplicated in SOR 1.m) support the application of the above disqualifying conditions. Accordingly, the burden shifts to Applicant to establish mitigation of the security concerns raised by his financial history and current circumstances.

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.

None of the above mitigating conditions apply. Applicant's student loans were granted to him 11 to 17 years ago and his defaults on loans occurred many years ago as well. His debts, however, remain unpaid at this time and cast doubt on his current reliability, trustworthiness, and judgment. Since his graduation from medical school in 2011, Applicant has been chronically underemployed or unemployed. He obtained a good job over two year ago, but has not initiated any steps to rehabilitate any of his student loans so that he could enter into a good-faith effort to begin paying them or his credit-card debt pursuant to appropriate payment plans. He has not acted responsibly

under the circumstances, and his behavior casts doubt on his current reliability, trustworthiness, and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination by considering the totality of the applicant's conduct and all the 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(a), 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 have 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. Some further comments are warranted. Applicant began an expensive medical school education in Country A, which he paid for over a six-year period with borrowed money. He had no realistic plan as to how he would repay these loans and has not acted responsibly since graduation to develop a plan to repay them.

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude that Applicant did not mitigate the financial trustworthiness 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 through 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

John Bayard Glendon
Administrative Judge