



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



In the matter of:)
)
) ADP Case No. 21-02697
)
Applicant for Public Trust Position)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is denied.

Statement of the Case

On May 5, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken 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 adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on May 31, 2022¹, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on June 7, 2022. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, or object to the Government's evidence. Items 1 through 6 are admitted into evidence. The case was assigned to me on September 15, 2022.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.n and denied the allegations in ¶¶ 1.o and 1.p. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He served in the military from 2005 to 2009 and was deployed in combat operations. He received an honorable discharge. He attended technical school from 2009 to 2011. He attended college from 2011 to 2016 and earned a bachelor's degree. He married in 2005 and divorced in 2011. He has a child from the marriage who is 12 years old. He has two other children, ages 20 and 7, from previous relationships. He has been employed by a federal contractor since November 2018. Before then he had periods of unemployment and underemployment. (Item 2)

The SOR alleges that Applicant has delinquent student loans totaling approximately \$67,408 (SOR ¶¶ 1.a through 1.l), \$6,371 of consumer debt (SOR ¶¶ 1.m and 1.n) and \$34,897 of child support arrearages (SOR ¶¶ 1.o and 1.p). Applicant admits all of the debts, but disputes the amount owed in child support arrearages. In his January 2019 security clearance application (SCA), he disclosed his child-support arrearages and stated that his monthly support obligations were too high and he was seeking a modification to have the amounts more commensurate with his income. He said he was in contact with the child support caseworker. (Items 1, 2)

The debts alleged are corroborated by Applicant's admissions in security clearance application, his answer to the SOR, statements made to the government investigator during his background interview, and credit bureau reports from March 2020, March 2021, and January 2022. (Items 1, 2, 3, 4, 5, 6)

In Applicant's July 2020 background interview with a government investigator, he attributed his financial problems to lack of income and the high child-support payments. He told the investigator in November 2002 he was ordered to pay \$300 to support his eldest child. He fell behind and was approximately \$11,647 in arrears because he did not earn enough income to pay the full amount and other child-support obligations and

¹ It appears Applicant's Answer to the SOR is incorrectly dated as March 31, 2022, which would be before the Statement of Reasons was issued. Other documents in Applicant's answer are dated May 20, 2022. It is therefore extrapolated that the correct date of the Answer is May instead March.

expenses. In November 2018, the amount was reduced to \$250, which is garnished from his wages. In his answer to the SOR, Applicant disputed the amount he owed on this debt and provided a document from the court administering the child support, which shows the amount he owes in arrears is \$10,851. (Items 1, 3)

Applicant told the investigator that he was ordered to pay \$190 to support his other child. He fell behind in his payments as stated above, and his obligations are in arrears in the approximate amount of \$23,250. In November 2018, his monthly obligation was reduced to \$150 a month, which is garnished from his wages. In his answer to the SOR, Applicant disputed the amount he owed on this debt and provided a document from the court administering the child support, which shows the amount he owes in arrears is \$20,186. (Items 1, 3)

Applicant told the investigator that in March 2010, he was ordered to pay \$600 for monthly child support for his third child. He told the investigator that he is approximately \$4,000 in arrears for unpaid support and medical bills associated with this child's birth. In November 2018, the amount of support was reduced to \$500. It is being garnished from his wages. The arrearages for this child were not alleged in the SOR and will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis. (Item 3)

Applicant acknowledged to the investigator that he has approximately \$62,000 in delinquent student loans that he began incurring from 2010 to 2016. He has not attempted to pay them because he does not have the resources. He has not contacted the creditors and cannot pay them until his finances improve. He stated he intended to contact the creditors to find out if the loans could be placed in forbearance. He did not provide additional information about the status of these loans. (Item 3)

Applicant acknowledged the consumer debts alleged in the SOR began accruing in 2012 and 2014. He has not attempted to pay them because he does not have the financial resources. (Item 3)

Applicant told the investigator that his financial problems are due to his divorce and his large child-support obligations. He went through a period when he could not find full-time employment that paid enough to pay his obligations. In 2018, he was able to start meeting his obligations. He said he intends to pay his debts. (Item 3)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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 sensitive 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(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 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. Directive ¶ E3.1.15 states 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 security 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.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or 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.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

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

Applicant has delinquent student loans, consumer debts, and child-support arrearages that began accumulating in 2012. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. 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 (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;
- (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
- (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.

Applicant attributes his financial issues to being underemployed and unemployed. These conditions were beyond his control. He has been steadily employed since 2018. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. It appears that Applicant has been making his monthly child-support payments, but has minimally reduced his arrearages. He has not paid, made payment arrangements, or contacted the creditors for his delinquent student loans or consumer debts. The evidence demonstrates that Applicant has not acted responsibly under the circumstances. AG ¶ 20(b) has minimal application.

Applicant's debts are recent and ongoing because he has not provided evidence he is actively resolving them. He has minimally reduced his child-support arrearages, but still has a large delinquent balance owed. AG ¶ 20(a) does not apply. He did not provide evidence that he is participating in financial counseling or has a plan for paying his delinquent debts. There is no evidence he made good-faith efforts to pay his delinquent debts or that they are under control. AG ¶¶ 20(c) and 20(d) do not apply. Applicant disputed the balance owed on his child-support arrearages and provided documents to show the current delinquent balance. AG ¶ 20(e) applies to the extent that the balances are reduced, but does not mitigate the arrearages owed.

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 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(c), the ultimate determination of whether to grant eligibility for a public trust position 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.

Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant mitigated the trustworthiness concerns arising under Guideline F, financial considerations.

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.p	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge