



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



In the matter of:)	
)	
-----)	ADP Case No. 20-00821
)	
Applicant for Public Trust Position)	
)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

February 2, 2023

Decision

ROSS, Wilford H., Administrative Judge:

On July 25, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Government Exhibit 1.) On June 17, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F, Financial Considerations (SOR 1.a to 1.d) and E, Personal Conduct (SOR 2.a). The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on June 18, 2017.

Applicant answered the SOR in writing (Answer) on an unknown date and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 4, 2022. The case was assigned to me on April 12, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 18, 2022. I convened the hearing as scheduled on June 14, 2022. The Government offered Government Exhibits 1 through 6, which were admitted without objection.

Applicant testified on his own behalf. The transcript for this hearing (TR1) was received on June 23, 2022.

Based on evidence adduced at the June 14, 2022 hearing Department Counsel moved to amend the SOR to add an additional allegation concerning a charged-off debt under Guideline F (SOR 1.e) pursuant to ¶ E3.1.17 of Enclosure 3 of the Directive. Applicant did not have an objection to the amendment but did request the hearing be continued so he could respond. Pursuant to that request the hearing was adjourned. (TR1 at 34-42.)

The hearing in this case reconvened on July 6, 2022. Applicant testified and submitted five exhibits (Applicant Exhibits A1, A2, B1, C1, and D1), which were admitted without objection. He asked that the record be left open for the receipt of additional documentation. Applicant Exhibit E was received in a timely fashion, and admitted without objection. DOHA received the transcript of the July 6, 2022 hearing (Tr2) on July 15, 2022. The record closed on July 18, 2022

Findings of Fact

Applicant is 48 years old and married. His wife is a registered nurse. He has a Bachelor's degree with additional post-graduate education. Applicant began work with his current employer in August 2016. He requires access to sensitive personal information in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 17.)

Paragraph 1 (Guideline F - Financial Considerations)

The SOR contained five allegations under Guideline F, Financial Considerations, including the amendment discussed above. Applicant admitted all the allegations in the SOR under this paragraph with explanations. Evidence for the existence of the debts set forth in the SOR is found in credit reports of Applicant dated August 14, 2018; January 15, 2020; December 21, 2021; and June 10, 2022. (Government Exhibits 3, 4, 5, and 6.) Additional support is found in the Report of Investigation (ROI) of an interview of Applicant by a Government investigator on May 13, 2019. (Government Exhibit 2.) The total amount of past-due indebtedness owed by Applicant is alleged to be approximately \$53,780.

Applicant and his wife (hereafter "Applicant" will refer to both of them unless otherwise indicated) purchased a franchise from a national home-health-care company (HHC) in approximately 2015. In order to fund the establishment of the franchise the HHC recommended they take out several credit cards that had introductory interest rates of zero percent and use them to obtain cash advances. During the introductory period, which corresponded with approximately the first two years of the franchise, they were able to make the contract payments. Once the introductory period was over the credit cards began charging interest. At this point, Applicant realized that the business,

while successful, would not allow them to make the required payments going forward. In order to resolve the issue in a proactive manner Applicant obtained the services of a debt resolution company (DRC) in approximately May 2017. After retaining the DRC Applicant turned over negotiation of the credit card debts to the DRC and began making consistent monthly payments of \$1,900 to the DRC. The DRC was successful in negotiating settlement agreements with all of the credit card debt alleged in the SOR. Based on these negotiations Applicant paid off the newly agreed amounts through the DRC. All the allegations in the SOR relate to the business run by Applicant's spouse. (Answer; Tr1 at 14-16, 26-29, 31, 47, 51-53; TR2 at 7-10, 14-15.)

The status of the debts set forth in the SOR is as follows:

1.a and 1.e. Applicant admitted owing \$14,801 to the collection agency in SOR 1.a. This debt is set forth in Government Exhibit 4 at page 2. The high credit for the original underlying credit card debt is \$17,292. Date of last activity is June 2017.

Evidence shows that this is the same debt as that alleged in SOR 1.e. This debt to a financial institution is set forth in Government Exhibit 6 at page 4. The high credit for this credit card debt is \$17,292. Date of last activity is June 2017.

Applicant Exhibit E is a statement from the DRC concerning payment of the debt set forth in SOR 1.a and 1.e through a different collection agency than the one set forth in SOR 1.a. In January 2019, the DRC reached a 50% payout of the \$17,292 debt. Records from the DRC show the debt was successfully paid off in June 2021. (Applicant Exhibits A-2 and E.) This debt is resolved. (TR1 at 30-32, 35-38, 43-45; TR2 at 17-21.)

1.b. Applicant admitted owing a past-due debt to this financial services company in the amount of approximately \$10,277. In September 2019 the DRC reached a 50% payoff agreement with this creditor as shown by documentation from the creditor. (Applicant Exhibit C-1.) The latest credit report states, "Account paid for less than full balance. Paid charge off. Fixed rate." (Government Exhibit 6.) This debt is resolved. (TR1 at 33.)

1.c. Applicant admitted owing a past-due debt to a bank in the amount of approximately \$6,377. In April 2020, the DRC reached a payoff agreement with this creditor as shown by documentation from the creditor. (Applicant Exhibit B-1.) The latest credit report states, "Account paid for less than full balance. Paid charge off." (Government Exhibit 6.) This debt is resolved. (TR1 at 33.)

1.d. Applicant admitted owing a past-due debt to a financial services company in the amount of approximately \$5,033. In September 2019, the DRC reached a payoff agreement with this creditor as shown by documentation from the creditor. (Applicant Exhibit D-1.) The latest credit report states, "Account paid for less than full balance. Paid charge off." (Government Exhibit 6.) This debt is resolved. (TR1 at 33.)

Applicant testified that he and his wife have learned their lesson on using debt. He acknowledged that the use of these credit cards in this way did not work for them. However, he argued that he used good sense in obtaining the services of the DRC and using the company to achieve a resolution with each of the creditors. He and his wife currently have no past-due debt, and the company is still in existence and profitable. (Government Exhibit 6; TR1 at 25-26, 34; TR2 at 10-14, 21-22.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted the factual allegations under this guideline. However, he denied having an intent to falsify the questionnaire or the subsequent interview.

Applicant filled out his e-QIP on July 25, 2018. Section 26 of that questionnaire concerns Applicant's financial situation. Several subsections ask whether, within seven years of filling out the questionnaire, Applicant had defaulted on a loan; had debts turned over to a collection agency; had an account suspended, charged off, or cancelled for failing to pay as agreed; or had been 120 days delinquent on debts. A different subsection asked whether he was currently 120 days delinquent on his debts. Applicant answered all the questions, "No." As stated, Applicant had past-due debts, so this was an incorrect answer to a relevant question about his financial situation. (Government Exhibit 1.)

Applicant was interviewed by a Government investigator on May 13, 2019. When first questioned about delinquent debts he demurred. When confronted with the debts set forth in Paragraph 1 of the SOR Applicant agreed to their existence. The ROI stated, "Subject [Applicant] did not report these [debts] on his security questionnaire, due to the accounts being in the process of being resolved." (Government Exhibit 2 at 6.)

Applicant subsequently stated in his Answer, "I misunderstood/misinterpreted the question on Section 26 – Financial Record – Delinquency Involving Routine Accounts – My understanding was that if I go via a debt relief company then that means that I am not defaulting on my payments and I am agreeing to pay the amount that I owe."

In his testimony, Applicant expanded on these statements. He stated that he had a good-faith belief that working with the DRC meant that he was not delinquent on the debts since he was agreeing to the revised payments and payment plans in a legal and above-board way. Applicant also stated that he believed the debts were not in collections at the time he and his spouse went to the DRC. (TR1 at 16-17, 45-48, 53; TR2 at 7-8, 15-17, 22.)

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.” The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant’s suitability for national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the Adjudicative Guidelines. 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(d), 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 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.

Directive ¶ E3.1.14 requires the Government to 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 national security eligibility 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

Paragraph 1 (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 personal 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.

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 had a history of being unable to fully satisfy all of his debts. The evidence raises both trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three 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, 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; and

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

The evidence supports application of all of these mitigating conditions in this case. Applicant and his wife opened a franchise business in the HHC industry. On the advice of the head office, they used zero interest credit cards to obtain opening financing. The franchise did not progress financially as quickly as Applicant and his wife anticipated, leaving them with a financial issue in the 2017-2018 timeframe. Instead of ignoring it, Applicant and his spouse obtained the help of the DRC at a point where the debts either were not yet delinquent or were not in collections. The DRC was successful in establishing workable financial plans that Applicant was able to complete to all the creditors' satisfaction. AG ¶¶ (a), (b), (c), and (d) apply. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concerns pertaining to the personal conduct guideline are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The Government alleged in SOR ¶ 2.a that Applicant falsified the e-QIP that he filled out on July 25, 2008, by not admitting that he had delinquent debts. The allegation also stated that he initially denied existence of the debts during an interview with a Government investigator.

I find that Applicant did not intend to falsify his answers on the questionnaire or to the investigator. The evidence is clear that Applicant had a good faith, if erroneous, belief that he did not have to say his debts were delinquent because he had turned them over to the DRC, and they were working with the creditors. In other words, he believed that the action in hiring the DRC to help him meant that the debts were no longer delinquent since active negotiations were going on. Applicant's testimony on this point was subject to rigorous cross-examination by Department Counsel.

Based on my finding that Applicant did not intend to falsify his answers on the questionnaire, or during his interview, none of the disqualifying or general Personal Conduct guideline concerns apply to Applicant's conduct. Paragraph 2 is found for Applicant.

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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security 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 submitted sufficient information to show that he has resolved all of the past-due indebtedness that is the subject of the Guideline F allegations in a reasonable manner to the satisfaction of the creditors. He did not deliberately falsify the answers on his questionnaire, or during his interview. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant met his burden to mitigate the trustworthiness concerns arising from his financial issues and alleged personal conduct.

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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a through 1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a public trust position. Eligibility for access to sensitive ADP information is granted.

WILFORD H. ROSS
Administrative Judge