



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



In the matter of:)
)
) ADP Case No. 22-01352
)
Applicant for Public Trust Position)

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: *Pro se*

03/22/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On July 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on August 4, 2022, and requested a hearing before an administrative judge. The case was assigned to me on January 31, 2023.

The hearing was convened as scheduled on March 9, 2023. I admitted Government Exhibits (GE) 1 through 4 and Applicant’s Exhibits (AE) A through C in evidence without objection. Applicant also testified at the hearing. I received a transcript (Tr.) of the hearing on March 16, 2023.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom he has worked as a consultant since about December 2020. He has also been self-employed as a consultant since about July 2017. He is a citizen of Nigeria and a naturalized U.S. citizen. He earned a bachelor's degree in 2004 and a master's degree in 2010. He is twice divorced. He married for the third time in December 2017. He is a father to seven-year-old twins and a three-year-old. (Tr. 20-27, 65; GE 1, 2)

In the SOR, the Government alleged Applicant's two delinquent debts totaling approximately \$35,000 (SOR ¶¶ 1.a and 1.b). These delinquencies were for credit cards. Applicant admitted both SOR allegations. His admissions are adopted as findings of fact and are corroborated by the Government's February 2023 and May 2022 credit reports. Despite being required to do so, Applicant did not divulge these financial delinquencies on his October 2021 security clearance application (SCA). During his November 2021 security interview, he did not disclose these delinquencies until the investigator confronted him with them. These failures to voluntarily divulge his financial delinquencies were not listed on the SOR. Any adverse information not alleged in the SOR, such as Applicant's failure to divulge financial delinquencies, cannot be used for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). (SOR; Answer; GE 2-4)

The delinquent credit card in the amount of \$20,848 listed in SOR ¶ 1.a has been resolved. Applicant opened this credit card in June 2016 to pay for living expenses. He became delinquent on the account in February 2020. He claimed he fell behind on this account because of the extra expenses he incurred because one of his children was diagnosed with autism. He also claimed that he was not making nearly as much money in February 2020 as he currently does. During his November 2021 security interview, he claimed that he had a dispute with some of the charges on the account. He provided no documentation to corroborate or substantiate the nature or validity of his dispute with the charges on this account. He first contacted the creditor to settle this account in about January or February 2022. After a delay caused by his indecisiveness regarding the effect his settlement would have on the mortgage he was attempting to secure, Applicant made a payment arrangement to pay off this debt in July 2022. He complied with this payment arrangement by paying a down payment of \$2,999, five monthly payments of \$2,000, and a \$4,000 payment in January 2023. He provided an undated document reflecting that he settled this account for less than the full balance. (Tr. 17-19, 27-46; Answer; GE 2-4; AE A, B)

The delinquent credit card in the amount of \$15,302 listed in SOR ¶ 1.b has been resolved. Applicant opened this personal credit-card account in April 2016 to pay for employment expenses related to travel for the employer for whom he worked until April 2017. He became delinquent on the account in about June 2018. He claimed that he fell behind on this account because he had a dispute with his employer over the expenses

they should cover. He also claimed that the creditor took away his access to the account and its information on an unspecified date, which made it difficult for him to resolve his dispute with his former employer. He provided no documentation to corroborate or substantiate the nature or validity of his dispute with his employer or his efforts to resolve it. He did not provide documentation to corroborate his claim that the creditor denied his access to the account. He claimed he fell behind on this account because of his dispute, because he did not have access to this account, because of the extra expenses he incurred because one of his children was diagnosed with autism, and because he was not making nearly as much money in 2018 as he currently does. After his account access was allegedly denied, on several occasions, he received written communications from the creditor advising him that his account was delinquent and providing contact information to resolve it. In August 2022, he settled the account for less than the full balance by making a lump-sum payment of \$1,989. He provided a document from the creditor dated August 24, 2022, reflecting the terms of his pending settlement. The February 2023 credit report corroborates that he settled the account. (Tr. 17-19, 46-61, 65-69; Answer; GE 2-4; AE A, C)

Since about early 2018, Applicant has earned at least \$165,000 to \$200,000 annually in salary. He did not provide information regarding his earnings prior to 2018. Beginning in December 2020, he earned about \$390,000 in annual wages. Applicant's wife, a Nigerian citizen, earns about \$200,000 in annual wages. She and Applicant's children lived in Country A, so they do not combine their income. Instead, they pay their expenses separately. Applicant, his spouse, and his children now live together in the United States. Applicant has approximately \$50,000 to \$100,000 in a savings account. He has several hundred thousand dollars invested in stocks. He has about \$100,000 invested in a retirement account. In about May 2016, he purchased a home for over \$400,000. His monthly mortgage is about \$3,300. In 2015, he financed the purchase of a vehicle for \$72,000. His monthly payments on this vehicle were over \$900 until he satisfied the car note in about July 2021. (Tr. 21-27, 63-65, 69-71)

While Applicant was delinquent on at least one of the SOR accounts, he took numerous trips involving international flights that were not related to work. Some of these trips were vacations. Some were trips to visit his family in Country A. Some were to visit his family in Country B. Applicant claimed that his wife paid for some of these trips with her own income, but he did not specify which trips and he did not provide any documentation to corroborate this claim. Applicant acknowledged that several of the trips he made that he paid for while the SOR accounts were delinquent cost at least \$1,000 each. (Tr. 55-59; GE 1, 2)

In addition to not earning as much money as he later did, having disputes about both SOR delinquencies, and having a child diagnosed with autism, Applicant claimed he did not settle his debts until after the SOR was issued because he had to pay for other expenses for his family. For example, he claimed that he had to pay for a live-in nanny in Country A, and he had to pay for his family and him to make trips to visit one another. He also claimed that he has always had enough money to pay his debts, but he did not prioritize the SOR debts until the time he satisfied them. He denied that he settled the SOR debts because his position of public trust was in jeopardy and claimed

that it was merely a coincidence that he settled the accounts after he received the SOR. (Tr. 18-19, 32-33, 35, 44-46, 51, 54-61, 65-69; Answer; GE 2)

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for 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 to be used in evaluating an applicant's eligibility for a public trust position.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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."

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 to obtain a favorable security decision.

A person who seeks a public trust position 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 the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had two delinquent debts totaling about \$35,000 that were delinquent for years. Despite earning a significant amount of money since 2018, his expenses initially left him unable to pay these debts. In December 2020, he almost doubled his already significant salary. At that point, (and possibly earlier), he had the ability to satisfy these debts but chose not to until after the Government issued the SOR. The evidence is sufficient to raise the above disqualifying conditions, thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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;
- (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.

While Applicant has resolved his delinquencies by settling them for less than the full amount, he did not do so until after he received his SOR. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance or eligibility for a public trust position is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). He therefore has not shown that he resolved the debts in good faith. He settled the second of his delinquent debts about two months ago, so he has not established a track record of financial responsibility sufficient to show that his financial delinquencies are unlikely to recur.

He has provided evidence that his delinquencies resulted (at least in part) from his child's autism and were therefore beyond his control. However, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these debts. As he waited until July 2022 to begin to pay these debts despite having the means to do so earlier, he has not acted responsibly under the circumstances.

Applicant claimed that he had disputes regarding both SOR debts. However, he provided no documentary evidence to substantiate any fraudulent charges for the debt in SOR ¶ 1.a or that his former employer should have paid the debt in SOR ¶ 1.b. He also did not provide documentary corroboration that he disputed the debts with the creditor, the credit reporting agencies, or his former employer. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Absent this proof, he has not provided sufficient evidence to show that his disputes were reasonable.

AG ¶ 20(b) and AG ¶ 20(d) partially apply. None of the Guideline F mitigating conditions are fully applicable and the financial considerations trustworthiness concerns are not mitigated.

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.

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. Applicant was evasive during his testimony. He claimed that he could not remember recent, noteworthy dates, such as an approximation of when he began working for his current employer or when he contacted creditors. Multiple times during the hearing, I admonished him to answer appropriate cross-examination questions. These instances and his failure to divulge delinquent financial accounts on his SCA and during his security interview cause me to question his credibility. I have also incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. I conclude Applicant did not mitigate the financial considerations 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-1.b:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a position of public trust. Eligibility for access to sensitive information is denied.

Benjamin R. Dorsey
Administrative Judge