



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



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| In the matter of: |) | |
| ----- |) | |
| |) | ADP Case: 21-02814 |
| Applicant for Public Trust Position |) | |

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

11/13/2023

Decision

ROSS, Wilford H., Administrative Judge:

Statement of Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 4, 2019. (Government Exhibit 1.) On November 18, 2022, the Defense Counterintelligence and Security Agency Central Adjudication Services, formerly known as Department of Defense Consolidated Adjudications Facility, issued a Statement of Reasons (SOR) to Applicant, detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense 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*, effective within the Department of Defense on June 8, 2017.

Applicant submitted an answer (Answer) to the SOR with two attachments (Attachments 1 and 2) on February 3, 2023, and requested a hearing before an administrative judge. The Government was ready to proceed on March 17, 2023. The case was assigned to me on March 27, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a final notice of hearing on May 12, 2023. The hearing was convened as scheduled on July 26, 2023. The Government offered Government Exhibits 1 through 19, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 4, 2023. Applicant requested the record remain open until September 15, 2023, for receipt of additional information. Applicant submitted in a timely fashion Applicant Exhibits A through G, which were also admitted without objection. The record then closed as scheduled.

Findings of Fact

Applicant is 54 years old and married for the second time. He is employed as a fuel truck driver by a defense contractor and requires a finding of trustworthiness in connection with his employment. (Government Exhibit 1 at Sections 13A, 17, and 18; Tr. 9-13, 28-30.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. He admitted all the allegations in the SOR with explanations. He also submitted additional information to support the granting of national security eligibility.

Applicant's financial issues can be divided into four distinct areas: state and Federal income tax issues (1.a through 1.e); 1999 bankruptcy and related debts (1.i, 1.j, 1.k, and 1.n); 2009 bankruptcy and related debts (1.h, 1.l, and 1.m); and current delinquent debts (1.f, 1.g, 1.o, 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, 1.v, 1.w, and 1.x). The allegations will be discussed in the above order.

INCOME TAX ISSUES

With regard to his tax issues as described below, Applicant retained an income tax advocate firm (ITA) in 2018 to assist him in resolving all of his tax issues. He remained a client of ITA up to the date of the hearing. He stated, "I hired them to take care of all my tax issues from way back when to present." He provided them with a power of attorney to resolve his tax issues with the IRS. He admitted that the ITA's communications with him have been sporadic and not very revealing. (Government Exhibit 3 at 6, Government Exhibit 5; Applicant Exhibits A and F; Tr. 33-36, 41-42.)

1.a. Applicant admitted that he had failed to file his 2010 Federal income tax return in a timely fashion. Documentation from the IRS shows that he filed this return on December 19, 2011. While the return was delinquent, it was successfully filed over ten years ago. This allegation is found for Applicant. (Government Exhibit 4 at 11; Tr. 31-35, 67.)

1.b. Applicant admitted that he had failed to file his state 2010 tax return in a timely fashion. As stated, he had hired ITA to resolve his state tax issues as well. He further testified that he believed the ITA had filed this tax return. He stated that he had provided a copy of this tax return to the Government. No corroborating evidence was contained in the evidence provided to me by either party. (Tr. 42-46.)

1.c. Applicant admitted that he had a Federal tax lien entered against him in 2012 in the amount of \$15,012. He testified that his total tax liability to the IRS was approximately \$28,000. The ITA was working with the IRS and filed an Offer In Compromise in February 2021. No information was given as to whether the Offer was accepted. (Government Exhibits 4 and 8; Tr, 35-42, 46-47.)

1.d. Applicant admitted that he had a state tax lien entered against him in 2013 in the amount of \$1,353. This lien was released in 2016. He testified that to the best of his knowledge he did not owe any money for his state taxes. (Government Exhibit 9; Tr. 42-48.)

1.e. Applicant admitted that he had a state tax lien entered against him in September 2008 in the amount of \$1,598. This lien was released in December 2008. As stated, he testified that to the best of his knowledge he did not owe any money for his state taxes. (Government Exhibit 10; Tr. 42-48.)

It is noted that Applicant was very vague about his tax situation in general. He had a hard time remembering dates and events. (*See, for example*, Tr. at 31-33.)

1999 BANKRUPTCY AND RELATED DEBTS

1.i. Applicant admitted filing a Chapter 7 bankruptcy petition on March 8, 1999. He received a discharge in bankruptcy of all of his dischargeable debts in June 1999. He stated that this bankruptcy was brought about because of his divorce from his first wife in 1998. (Government Exhibit 1 at Section 17; Government Exhibit 6; Attachment 1; Tr. 49-52.)

1.j. Applicant admitted having a judgment entered against him for a delinquent medical debt in the amount of \$810. This judgment is not enforceable under the terms of Applicant's discharge in bankruptcy. He has not made any payments on this debt and has no plans to make payments on this debt. (Government Exhibit 13; Tr. 50.)

1.k. Applicant admitted having a judgment entered against him for a delinquent veterinary debt in the amount of \$144. This judgment is not enforceable under the terms of Applicant's discharge in bankruptcy. He has not made any payments on this debt and has no plans to make payments on this debt. (Government Exhibit 14; Tr. 50-51.)

1.n. Applicant admitted having a judgment entered against him for a delinquent debt in the amount of \$1,268. This judgment is not enforceable under the terms of Applicant's discharge in bankruptcy. He has not made any payments on this debt and has no plans to make payments on this debt. (Government Exhibit 17; Tr. 51.)

2009 BANKRUPTCY AND RELATED DEBTS

1.h. Applicant admitted filing a Chapter 7 bankruptcy petition on May 19, 2009. He received a discharge in bankruptcy of all of his dischargeable debts on September 21, 2009. He stated that he did not recall why he filed bankruptcy, but stated he had many medical debts. Applicant submitted his 2009 bankruptcy petition and related schedules. (Applicant Exhibit F.) Schedule F of the petition sets forth Creditors Holding Unsecured Nonpriority Claims in the amount of \$31,508. Many of them are medical debts. (Government Exhibit 7; Applicant Exhibit F; Tr. 52-55.)

1.i. Applicant admitted having a judgment entered against him for a delinquent car loan debt in the amount of \$550. This judgment is not enforceable under the terms of Applicant's discharge in bankruptcy. He has not made any payments on this debt and has no plans to make payments on this debt. (Government Exhibit 15; Tr. 60.)

1.m. Applicant admitted having a judgment entered against him for a delinquent debt in the amount of \$700. This judgment is not enforceable under the terms of Applicant's discharge in bankruptcy. He has not made any payments on this debt and has no plans to make payments on this debt. (Government Exhibit 16; Tr. 60.)

CURRENT DELINQUENT DEBTS

1.f. Applicant admitted having a judgment entered against him in January 2018 for a delinquent vehicle debt in the amount of \$6,800. He stated that he had been making payments on the judgment but had to stop due to medical issues. He further stated that he had reduced the debt to \$1,500. He stated he intends to restart payments soon. No further information was provided. This debt is not resolved. (Government Exhibit 11; Tr. 56-58.)

1.g. Applicant admitted having a judgment entered against him in February 2012 for a delinquent debt owed to a credit union in the amount of \$806. He has recently contacted the credit union, which stated that Applicant's debt is now \$2,800 and must be paid in full. Applicant stated he intends to restart payments soon. No further information was provided. This debt is not resolved. (Government Exhibit 12; Applicant Exhibits A and D; Tr. 59-60.)

1.o. Applicant admitted owing a creditor for a delinquent debt in the amount of \$737. He has not made any recent payments on this debt and has no plans to make payments on this debt. It is not resolved. (Government Exhibit 19 at 4; Tr. 61-62, 64.)

1.p. Applicant admitted owing a creditor for a delinquent debt in the amount of \$664. He has not made any recent payments on this debt and has no plans to make payments on this debt. It is not resolved. (Government Exhibit 19 at 4; Tr. 62-64.)

1.q. Applicant admitted owing a creditor for a delinquent debt in the amount of \$615. He has not made any recent payments on this debt and has no plans to make payments on this debt. It is not resolved. (Government Exhibit 19 at 4; Tr. 62-64.)

1.r. Applicant admitted owing a jewelry store for a delinquent debt in the amount of \$1,462. Subsequent to the hearing he made a payment of \$50 on this account. He intends to continue making payments on this account. (Government Exhibit 19 at 5; Applicant Exhibit B; Tr. 66.)

1.s. Applicant admitted owing a creditor for a delinquent debt in the amount of \$300, but stated in his Answer he had repaid some of it. The credit report from June 2019 indicates this account was "purchased by another lender," and, "transferred or sold." That credit report stated there was no balance and that the account was closed. The most recent credit report in the record, from March 2023, states there is no past due or charge off amount on this account. Based on the current state of the record, I find this debt has not been proved. The allegation is found for Applicant. (Government Exhibit 18 at 5, Government Exhibit 19 at 6; Tr. 67-68.)

1.t. Applicant admitted owing a creditor \$1,499 for a delinquent mobile telephone bill. He testified that this bill is in error, and the creditor admits it is an error, but they refuse to resolve it. He has taken no steps to dispute this debt with the credit reporting agencies. This debt appears on the June 2019 credit report, but does not appear in the March 2023 credit report. Based on the available record I find this debt has not been resolved. (Government Exhibit 18 at 5; Tr. 68-71.)

1.u. Applicant admitted owing a water district for a delinquent debt in the amount of \$346. He has not made any recent payments on this debt and has no plans to make payments on this debt. It is not resolved. (Government Exhibit 18 at 5; Tr. 71.)

1.v and 1.w. Applicant admitted owing two past-due medical accounts to a hospital in the amounts of \$4,785 and \$1,016. Subsequent to the hearing he made a single payment to the hospital in the amount of \$20. (Government Exhibit 18 at 6; Applicant Exhibit C; Tr. 72-73.)

1.x. Applicant admitted owing a creditor for a delinquent debt in the amount of \$629. He stated that he believed he had paid this debt off, but he had no supporting documentation. It is not resolved. (Government Exhibit 18 at 7; Tr. 73.)

Applicant stated that many of his financial issues were related to a number of surgeries that he has had over the years. He was often on disability and his income was reduced. However, his knowledge of his financial situation and the impact of his being on disability status on his finances was often vague and contradictory. (Tr. 32, 76-80.)

MITIGATION

Applicant submitted a letter from his manager. The writer states, “[Applicant] is a valuable asset to the company.” (Applicant Exhibit G.)

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 or areas 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 security 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 three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state income tax returns, as required, for tax year 2010. He continues to owe delinquent taxes. He filed for bankruptcy twice and continues to have and accumulate considerable past-due indebtedness. These facts establish prima facie support for the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

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

(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;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

INCOME TAX ISSUES

Turning first to Applicant's Federal income tax issues. As stated, records from the IRS show that his 2010 tax return was filed in 2011. He may still owe the IRS back taxes. However, he has retained an ITA firm and provided recent documentation from them showing that they are in contact with the IRS. The retention of that firm by Applicant shows good faith on his part. SOR 1.a and 1.c are found for Applicant.

Applicant was unable to show that he had filed his 2010 state income tax return. However, he stated that the ITA firm was retained to resolve his state tax issues as well. Under these facts, once again, he has shown good faith. The two paid state tax liens have no current security significance. SOR 1.b, 1.d, and 1.e are found for Applicant.

1999 BANKRUPTCY AND RELATED DEBTS

Applicant's 1999 bankruptcy was caused, at least in part, by his divorce in 1998. Bankruptcy is an accepted, legal way to resolve indebtedness. Creditors cannot attempt to collect debts that are discharged. Debtors like Applicant can pay such debts if they wish, but are under no legal obligation to do so. Given the fact that this bankruptcy happened over 20 years ago, I find that it has no current security significance. By the same token, the associated debts also have no current security significance. SOR 1.i, 1.j, 1.k, and 1.n are found for Applicant.

2009 BANKRUPTCY AND RELATED DEBTS

Applicant's 2009 bankruptcy was caused, at least in part, by medical bills he could not pay because he was on disability. As stated, bankruptcy is an accepted, legal way to resolve indebtedness. Creditors cannot attempt to collect debts that are discharged. Debtors like Applicant can pay such debts if they wish, but are under no legal obligation to do so. Given the fact that this bankruptcy happened over 10 years ago, I find that it has no current security significance. By the same token, the associated debts also have no current security significance. SOR 1.h, 1.l, and 1.m are found for Applicant.

CURRENT DELINQUENT DEBTS

Applicant submitted insufficient evidence to show that he is in control of his current finances. He was unable to show the current status of the debt in SOR 1.f. He has made no payments on the debts listed in SOR 1.g, 1.o, 1.p, 1.q, 1.u, and 1.x. He has made a single, minimal, payment to the creditors in SOR 1.r, 1.v, and 1.w subsequent to the hearing. He may have a legitimate dispute with the creditor set forth in SOR 1.t, but has done nothing to document the dispute. His overall knowledge of his current financial situation was poor. None of the mitigating conditions fully apply. As stated, SOR 1.s, is found for Applicant. The remaining current delinquent debt allegations (1.g, 1.o, 1.p, 1.q, 1.r, 1.t, 1.u, 1.v, 1.w, and 1.x) are found against Applicant, along with Guideline F.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a finding of trustworthiness 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 must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant provided insufficient evidence to show that he has resolved his financial issues, or that they will not recur in the future. The potential for pressure, exploitation, or duress has not been reduced. Overall, the evidence does create substantial doubt as to Applicant's judgment, eligibility, and suitability for a finding of trustworthiness. Applicant has not met his burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

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: | AGAINST APPLICANT |
|--------------------------------|-------------------|
| Subparagraphs 1.a through 1.e: | For Applicant |
| Subparagraphs 1.f and 1.g: | Against Applicant |
| Subparagraphs 1.h through 1.n: | For Applicant |
| Subparagraphs 1.o through 1.r: | Against Applicant |
| Subparagraph 1.s: | For Applicant |
| Subparagraphs 1.t through 1.x: | 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 national security eligibility for a public trust position. Eligibility for access to sensitive information or areas is denied.

Wilford H. Ross
Administrative Judge