



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



In the matter of:)
)
) ADP Case No. 23-01163
)
Applicant for Public Trust Position)

Appearances

For Government: Mark. D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On June 5, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). Applicant responded to the SOR on July 19, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on August 15, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 28, 2023. He responded with a memorandum and supporting documents.

Evidence

Government Exhibit (GE) 1 consists of the SOR and Applicant's answer. GE 2 and 3 are admitted in evidence without objection. Applicant objected to GE 4, a credit report from February 2022, because the report was "not current nor up to date." That objection is overruled, and GE 4 is admitted. The objection to GE 5, an unauthenticated report of investigation of a background interview, is sustained. Applicant's response to the FORM and attached documents are marked Applicant Exhibits (AE) A through G and admitted without objection,

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. He has worked for his current employer since October 2021. He is a high school graduate. He is married with a stepchild. (GE 2)

Applicant has a history of financial problems and delinquent debts. He attributed his financial problems to being young and naïve about financial matters. He "thought that [he] could just charge it to a credit card and pay it back later." He stated that his financial problems started in 2012 when he left a job because a supervisor was discriminating against him. He consolidated his debts into one payment, and then realized that he had credit on the other accounts and created more debts. He felt that because he was "young and naïve the financial institutions took advantage of the situation and led with predatory lending practices." (Applicant's response to SOR; GE 2-4; AE A)

Applicant and his father filed a Chapter 7 bankruptcy case in March 2019. Under Schedule D, Creditors Who Have Claims Secured by Property, the petition listed auto loans of \$23,308 and \$19,462, and \$5,415 owed to a retirement savings plan. Under Schedule E/F, Creditors Who Have Unsecured Claims, there were no priority unsecured claims. Nonpriority unsecured claims totaled \$169,257. All the debts were reported as community debts that were incurred by both debtors. In August 2019, Applicant and his father filed a motion with the court to dismiss the bankruptcy case. The case was dismissed in November 2019. It is unclear why Applicant filed the bankruptcy case with his father, and it is unclear why they moved to dismiss the case. (GE 2-4)

The SOR alleges the Chapter 7 bankruptcy and 15 delinquent debts totaling about \$80,000. Applicant admitted owing all the debts but stated that several of the debts were charged off or forgiven by an Internal Revenue Service (IRS) Form 1099-C (Cancellation of Debt). The debts are established through Applicant's admissions, a credit report from February 2022, and the Chapter 7 bankruptcy petition. (Applicant's response to SOR; GE 2-4; AE A)

The creditors for the debts alleged in SOR ¶¶ 1.f (\$2,645) and 1.i (\$3,489) charged off and cancelled the debts through an IRS Form 1099-C. In July and August 2023, Applicant paid or settled the debts alleged in SOR ¶¶ 1.g (\$1,572), 1.h (\$1,452),

1.i (\$868), and 1.o (\$961). He did not state how much he paid to resolve the debts. (Applicant's response to SOR; GE 4: AE A, D-G)

The debts alleged in SOR ¶¶ 1.b (\$28,902), 1.e (\$3,221), 1.k (\$5,345) and 1.n (\$2,511) are all owed to the same credit union. Applicant stated that he has established a \$25 per month payment plan for all the debts. He made the first \$25 payment in September 2023. He paid \$25 toward the \$844 medical debt (SOR ¶ 1.j) in September 2023. (Applicant's response to SOR; GE 4: AE A-C)

The debts alleged in SOR ¶¶ 1.c (\$15,414) and 1.d (\$2,511) are owed to a credit union (not the same credit union as discussed in above paragraph). He contacted the credit union and offered to pay \$25 per month towards the debts. The credit union informed him that the payments would have to be at least \$75 per month to be considered a payment plan. He has not made any payments toward this debt. (Applicant's response to SOR; GE 4: AE A)

Applicant owes a third credit union \$6,947 (SOR ¶ 1.p). He contacted the credit union about a payment plan. He was told that the account was referred to a third-party debt collector. He stated that once he has more information, he will contact the debt collector about setting up a payment plan. (Applicant's response to SOR; GE 4: AE A)

To sum up, two debts totaling \$6,134 were cancelled through an IRS Form 1099-C; four debts totaling \$4,853 were paid or settled in August or September 2023 for an undisclosed amount; and two payments of \$25 were made in September 2023 toward the other debts. He concluded his response to the FORM with:

As previously stated I understand that these debts are mine and I am trying to have them taken care of but by revoking my security clearance [eligibility for access to sensitive information] it puts me in the position of possibly losing my position or being demoted to a lesser paying position with my employer which in turn would result in the debts not being able to be paid. (AE A)

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 disqualifying and mitigating conditions in the AG. 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(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.

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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 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; and

- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including a dismissed Chapter 7 bankruptcy case and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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;

(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 attributed his financial problems to being young and naïve about financial matters. He stated that he left a job in 2012 because a supervisor was discriminating against him. He felt that financial institutions used predatory lending practices. There was insufficient evidence for a finding that Applicant received anything other than what he sought from his creditors. His financial problems did not result from conditions that were largely beyond his control.

The Chapter 7 bankruptcy is probative because it shows that Applicant was unable to pay his debts. The bankruptcy was dismissed, and the delinquent debts are alleged under other allegations. The bankruptcy does not have any remaining independent security significance. SOR ¶ 1.a is mitigated.

Applicant relies on the fact that creditors for the debts alleged in SOR ¶¶ 1.f (\$2,645) and 1.i (\$3,489) charged off and cancelled the debts through an IRS Form 1099-C. The Appeal Board has noted that "a creditor's choice to charge off a debt for accounting purposes does not affect the debtor's obligation to the creditor." See ISCR Case No. 08-11983 at 2 (App. Bd. Jan. 28, 2011) (citing ISCR Case No. 09-01175 at 2 (App. Bd. May 11, 2010)). While he did not pay the debts, I am considering those specific debts mitigated.

In July and August 2023, Applicant paid or settled the debts alleged in SOR ¶¶ 1.g (\$1,572), 1.h (\$1,452), 1.i (\$868) and 1.o (\$961). He did not state how much he paid to resolve the debts. An applicant who begins to resolve security concerns only after

having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. ISCR Case No. 17-03229 at 6 (App. Bd. Jun. 7, 2019). Those factors will go toward consideration of Applicant's overall financial situation and under the whole person, but those specific debts are mitigated.

Applicant made minimal payments toward his other debts, which total more than \$68,000. He stated that he intends to pay the remaining debts. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

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.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Subparagraphs 1.f-1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge