



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXX) ADP Case No. 23-01054
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Prose*

01/10/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant provided insufficient evidence that he acted responsibly or otherwise resolved the debts that became delinquent in 2016. Financial considerations trustworthiness concerns are not mitigated. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 22, 2022, Applicant completed and signed a Questionnaire for National Security Positions (SF 86). On May 16, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under DOD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), effective June 8, 2017.

On May 19, 2023, Applicant provided a response to the SOR, and he requested a hearing. On July 28, 2023, the case was assigned to me. On October 12, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 15, 2023. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. I held the record open until December 1, 2023, in the event either party wanted to supplement the record with additional documentation. Applicant provided an e-mail communication after his hearing, which I marked as Applicant Exhibit (AE) A, and which I admitted without objection. On November 22, 2023, DOHA received the hearing transcript. The record closed on December 2, 2023.

Findings of Fact

In Applicant's SOR response, he admitted all five allegations of delinquent debts totaling approximately \$21,000. (SOR ¶¶ 1.a through 1.e.) His admissions are accepted as findings of fact.

Applicant is 50 years old. He has been married for 27 years, and he has an adult son and a 12-year-old son. He was on active duty in the U.S. Army from 1992 to 1995. He went back on active duty in June 1997 through June 2000. He served one year in Bosnia. After his honorable discharge in June 2000 at the rank of sergeant (E-5), he served one year in the Army National Guard while he was enrolled in college. In August 2001, he earned an associate degree in automotive technology. (GE 1; Tr. 15-18, 22)

Since May 2022, Applicant has been employed by a government contractor as a technical support analyst. He makes approximately \$48,000 annually. His wife does not currently work. He is rated as 50% disabled by the Department of Veterans Affairs (VA). His monthly VA disability pay is approximately \$1,215. (Tr. 17-22, 39-40; GE 3)

Financial Considerations

The SOR alleges five delinquent debts, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a credit card debt placed for collection for \$4,998. Applicant believes this account became delinquent in 2016. Since it became delinquent, he has not made any payments or communicated with the creditor about this debt. In 2018, he contacted a bankruptcy attorney to assist him with his outstanding financial obligations. Applicant made payments to the attorney for a Chapter 7 bankruptcy filing fee. In May 2023, Applicant informed the attorney's secretary that he may want to pursue a Chapter 13 bankruptcy instead. Since that time, he has had no further communications with the attorney. After the hearing, Applicant sent an email stating he had contacted the attorney again and discovered the law office was permanently closed. Applicant will attempt to resolve his delinquent debts with another bankruptcy attorney. This debt is unresolved. (Tr. 24-25; AE A; GE 3)

SOR ¶ 1.b alleges a credit card debt placed for collection for \$4,672. Applicant believes this account became delinquent in 2016. Since it became delinquent, he has not made any payments or communicated with the creditor about this debt. He included this

debt in his 2018 communications with a bankruptcy attorney, who, as stated above, is no longer in business. This debt is unresolved. (Tr. 25-26; AE A; GE 3)

SOR ¶ 1.c alleges a credit card debt placed for collection for \$4,435. Applicant believes this account became delinquent in 2016. Since it became delinquent, he has not made any payments or communicated with the creditor about this debt. He included this debt in his 2018 communications with the bankruptcy attorney who is no longer in business. This debt is unresolved. (Tr. 26; AE A; GE 3)

SOR ¶ 1.d alleges a credit card debt placed for collection for \$3,972. Applicant believes this account became delinquent in 2016. Since it became delinquent, he has not made any payments or communicated with the creditor about this debt. He included this debt in his 2018 communications with the aforementioned bankruptcy attorney. This debt is unresolved. (Tr. 26-27; AE A; GE 3)

SOR ¶ 1.e alleges a credit card debt placed for collection for \$2,859. Applicant believes this account became delinquent in 2016. Since it became delinquent, he has not made any payments or communicated with the creditor about this debt. He included this debt in his 2018 communications with the bankruptcy attorney. This debt is unresolved. (Tr. 26-27; AE A; GE 3)

Applicant stated he had contacted the bankruptcy attorney in 2018 because his wife had lost her job in 2015, she attempted suicide, and in addition to the mounting credit card debts, they accumulated a lot of medical bills for her treatment. He could not keep up with the mounting debt. The filing fee for the Chapter 7 bankruptcy was \$1,700, and Applicant made payments to the attorney whenever he was able. The plan was to file bankruptcy in 2021, but due to COVID-19 everything was placed on hold. Applicant emailed the attorney a couple times and left some voice mail messages over the years, but he never heard back from him. In May 2023, the attorney's secretary called stating that the attorney needed to know what Applicant wanted to do. Applicant told the secretary that he would like to look at other options because his financial situation had improved. He also told the secretary he was going to pay off some of his debts and that he may prefer filing a Chapter 13 bankruptcy instead. The secretary told Applicant they would work on a plan and be in touch with him soon. Applicant has not had any further communications with the attorney or legal secretary since May 2023. (Tr. 27-38)

Applicant admitted that during the last two years he had accumulated approximately \$6,000 in credit card debt, but he emphasized that the accounts were not delinquent. He stated that he would not include this recent accumulation of credit card debt in his anticipated bankruptcy filing. He has never participated in a consumer financial counseling program. (Tr. 36-37, 40)

Applicant responded to a financial interrogatory in March 2023. He provided a personal financial statement (PFS) which showed his monthly net income, to include his VA disability pay, was \$4,385. After deducting his monthly expenses and financial obligations, he was left with a monthly remainder of \$878. There were no payments

arranged for his delinquent debts. There is no evidence that Applicant is taking action to resolve the five delinquent accounts listed in the SOR. (GE 3)

Policies

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.

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.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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. . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

Conditions that may raise financial considerations trustworthiness concerns are provided 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.

The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

The following financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

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

Applicant attributed his financial delinquencies to his wife's loss of employment in 2015, mounting credit card debt, and the unexpected medical bills associated with her treatment after a suicide attempt. Notwithstanding these events that impacted his finances, Applicant must demonstrate that he acted responsibly under the circumstances. He admitted that he intended to file bankruptcy, but as of the date of the hearing, he had not had contact with the attorney's office since May of 2023. After the hearing, when Applicant called the law office, he discovered that it had permanently closed.

Applicant's debts became delinquent in 2016. He has not made any payments or initiated communication with any of his delinquent creditors. He has not demonstrated that he acted responsibly to address his financial delinquencies. There are not clear indications that the debts are being resolved or that his finances are under control. Under

all the circumstances, Applicant failed to establish that financial considerations trustworthiness concerns are 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 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), "[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Applicant did not provide any evidence of payments, payment plans, or other actions to resolve the five delinquent debts alleged in the SOR. His actions show a lack of financial responsibility and good judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect sensitive information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a position of trust. The determination of an individual's eligibility and suitability for a trustworthiness position is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under his current circumstances, a position of trust is not warranted. In the future, he may well demonstrate persuasive evidence of his trustworthiness.

I have carefully applied the law, as set forth in the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated.

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 through 1.e: 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 or continue Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Pamela C. Benson
Administrative Judge