



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



In the matter of:)
)
) ADP Case No. 23-00275
)
Applicant for Public Trust Position)

Appearances

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

04/30/2024

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On May 10, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DCSA CAS acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on June 19, 2023, and requested a hearing. The case was assigned to me on December 5, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2023, and the hearing was held as scheduled on January 22, 2024. This hearing was convened using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection, except GEs 4 and 6, which were

admitted over Applicant's objection.. The Government's exhibit list and disclosure letter were marked as hearing exhibits (HE) I and II, respectively. Applicant testified and offered exhibits (AE) A-K, which were admitted without objection. Post-Hearing, Applicant submitted AE L, which was admitted without objection. DOHA received the hearing transcript (Tr.) on February 1, 2024.

Findings of Fact

Applicant admitted all the SOR allegations, with explanations, except for SOR ¶¶ 1.j, 1.m, 1.t, 1.v, and 1.w, which he denied. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 49-year-old employee of a federal contractor. He has worked for this employer since 2021. He experienced a period of unemployment during the COVID pandemic. He is married with four children, three of whom are minors. He holds a bachelor's degree and has worked towards a master's. (Tr. at 6, 36; GE 1)

The SOR alleged Applicant accumulated 19 delinquent (consumer and medical) debts totaling approximately \$33,400 (SOR ¶¶ 1.a-1.s). The allegations are supported by his disclosures in his trustworthiness application in December 2021; statements to a defense investigator during his background investigation in March 2022; credit reports from March 2022, December 2022, June 2023, and January 2024; admissions in his SOR answer; and admissions during his hearing testimony. (Tr. 41-50; GE 1-6; SOR Answer)

The SOR also alleged Applicant failed to timely file his federal tax returns for tax years 2020 and 2021, and that he owes the IRS for unpaid taxes in the approximate amount of \$2,771 for tax year 2018 (SOR ¶¶ 1.t and 1.v). It further alleged that Applicant owed state A \$1,671 for delinquent taxes; and that he failed to file his 2019-2021 state B income tax returns (SOR ¶¶ 1.u and 1.w). The allegations are supported by admissions in his trustworthiness application, statements to a defense investigator during his background investigation in March 2022, and his answers to interrogatives in April 2023. (GE 1-2; SOR Answer)

Applicant attributed his delinquent debts and tax problems to his illnesses (not specially identified) and his layoff during COVID. He also candidly admitted that he procrastinated and put things off. It was not until about a year ago, after he received the SOR that he was motivated into action. He is the sole wage earner in his household because his wife is devoted to homeschooling their children. In his SOR answer he indicated that he was working with his company's financial advisors on ways to pay his debt. During his testimony, he admitted he has not "engaged" them. (Tr. 32, 35, 38, 40 57)

Applicant testified that he admitted his responsibility for all the debts and he only questioned the current amounts owed and who were the proper current creditors or collection services to pay. He said he needed some time to figure this out. He did not

present any documentation to support the notion that any of the SOR-listed creditors were erroneous or that the debt amounts alleged in the SOR were incorrect. (Tr. 49-50)

Applicant testified consistently regarding SOR ¶¶ 1.a through 1.h and 1.i through 1.s) as follows: he admitted all the debts, he has not made any recent payments toward any of them, and he does not remember the last time he made any payments, but it would not have been within the last year. He negotiated a settlement and paid SOR ¶ 1.j in March 2023. Only SOR ¶ 1.j is resolved. (Tr. 41-50; SOR Answer)

Applicant blamed his untimely tax return filings on COVID and his own irresponsibility. He documented that he set up a payment plan with the IRS to pay monthly payments of \$40 to resolve his debt for tax year 2018 (SOR ¶ 1.t). He documented that he set up a payment plan with state A, where he made his initial payment of \$250 in January 2024, and he is obligated to make \$100 monthly payments through April 2025 (SOR ¶ 1.u). He documented that he mailed his 2020 and 2021 federal tax returns and his 2019 through 2021 state B tax returns on June 15, 2023 (SOR ¶¶ 1.v and 1.w). (Tr. 50-54; AE B, H; SOR Answer)

Policies

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.

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.

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 as to obtaining 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 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a trustworthiness concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 annual Federal, state, or local income tax as required.

Applicant accumulated 19 delinquent debts totaling approximately \$33,400. He failed to timely file his federal (2020-2021) and state (2019-2021) tax returns and he owed delinquent taxes to state A and the federal government for tax year 2018. I find all disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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;

(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.

Applicant's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. Except for one settled debt, Applicant has not documented payment towards the remaining SOR debts. While his medical issues and COVID were circumstances beyond his control, he has not shown responsible action toward addressing his delinquent debt. He admittedly procrastinated in addressing his debts. He has fared no better in addressing his tax issues. He has not provided any specific details about how he plans to address these debts in the future, or documented any legitimate dispute he has concerning the debts. He only filed his 2020 and 2021 federal returns and his 2019 through 2021 state B returns after the SOR was issued in May 2023. His dilatory action is contrary to acting in good faith. None of the above mitigating conditions fully apply. However, I am giving Applicant some mitigating credit for establishing a payment plan, before the issuance of the SOR, with the IRS to pay his 2018 delinquent taxes, and state A for his delinquent taxes there.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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 access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's contractor service, his medical issues, and his unemployment due to COVID. However, Applicant has not established a meaningful track record of financial responsibility by paying his debts or handling his state and federal tax issues, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated 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.i, 1.k-1.s, 1.v-1.w:	Against Applicant
Subparagraphs: 1.j, 1.t-1.u:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge