



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



In the matter of:)
)
) ADP Case No. 22-02393
)
Applicant for Public Trust Position)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/10/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On March 7, 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. The DCSA CAS acted under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on March 16, 2023, and requested a hearing before an administrative judge. I was assigned this case on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 22, 2024, and the hearing was convened as scheduled on March 7, 2024, using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 7, which

were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I) and its disclosure letter was marked as HE II. Applicant testified but did not offer any documentary evidence at hearing. The record was kept open until April 8, 2024, to allow Applicant to submit additional evidence. He timely submitted exhibits (AE) A-D, which were admitted without objections. DOHA received the hearing transcript (Tr.) on March 18, 2024.

Findings of Fact

Applicant admitted the SOR allegations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 42-year-old employee of a government contractor. He has been in his current position for approximately two years. Overall, he has been in the medical field almost 20 years. He enlisted in the Army in 2005 and served until 2012, when he received an honorable discharge. He was a medical technician in the Army. He deployed from 2009 to 2010 to Iraq. He holds a bachelor's degree. He is married and has three children, ages 17, 15, and 9. His wife also works in the medical field. (Tr. 24-28; GE 1)

The SOR alleged that Applicant had two delinquent debts. The first is based upon a mortgage account with a past-due balance of approximately \$32,900, which later went into foreclosure status with a total loan balance of approximately \$171,000. The second debt is a charged-off account for approximately \$27,900. Applicant admitted both debts in his SOR answer, and his May 2021 personal subject interview conducted by a background investigator. Credit reports also establish these two debts. (SOR answer, GE 3-7)

Applicant admitted that in approximately 2007, he cosigned on two loans with his brother-in-law (BL), so BL could purchase a home. He believed the purchase price was around \$190,000. He confirmed that both SOR debts arose out of the same underlying home purchase transaction. BL could not qualify for a loan on his own. While he is not particularly close with BL, he felt obligated to do so because his wife asked him to do so, and because of his cultural heritage, which creates an expectation to help relatives. Applicant was still on active duty in the Army at this time. He was also young and unsophisticated in these types of financial transactions. An example of this, was that Applicant believed he would only be liable for 50 percent of the debt in the event BL could not pay it. He told BL that he would cosign on the loans, but he expected BL to make all the payments, because he was in no position to do so. BL agreed to this. (Tr. 30-34; 48, 50)

The home purchased was located in a different state from where Applicant lived. Applicant never resided in the home, only BL and his family lived there. When Applicant was deployed in 2009-2010, he was notified by the original mortgage-loan lender that BL had missed some payments. Applicant or his wife contacted BL about the missed payments and BL said he would take care of them. Apparently that happened because Applicant heard nothing further from this lender. (Tr. 31, 35; 51-53)

Applicant did not hear anything further about this loan until approximately 2014 or 2015, when an attorney contacted him by text inquiring as to whether he owned the property that he helped finance for BL. He answered affirmatively. Concerned about this contact, Applicant's wife contacted BL to see what was happening. BL told his sister that his wife was handling the matter. A few weeks later, Applicant was served with legal process for a foreclosure action. Applicant received no warning from BL before being served that he was behind on his mortgage payments. Applicant believes the delinquent amount was approximately \$10,000. BL has never apologized for putting Applicant and his wife in this bad situation. (Tr. 52-56, 58)

Applicant did not receive any correspondence from the lender about the delinquent mortgage payments before he was served with process. BL did not attend the foreclosure proceedings and foreclosure was ordered and the property sold. The actual date of the foreclosure is not in the record, but Applicant's most recent credit report indicated a last payment date of January 2019. Applicant provided documentation showing that a sale of the property took place in December 2019, with a sale price of \$249,000, which exceeded the loan amount of \$171,481. From this documentation, it appears SOR ¶ 1.a was resolved. (Tr. 37-38, 68; GE 6; AE B)

Applicant also provided a copy of a 1099-C, Cancellation of Debt form received from a mortgage lender in the amount of \$9,467, which he claimed as income on his tax year 2023 federal tax return, as required. He believes this 1099-C is for the mortgage debt listed in SOR ¶ 1.b. This debt is resolved. (Tr. 43-44; AE A)

Applicant's current finances are sound. He owns his own home and is current on that mortgage loan that he incurred in 2012. His cars are paid. He is current on his student loans. His current credit report shows no delinquencies, except for the SOR debt and a debt for which his wife is responsible and he is only an authorized user. He provided his pay statement from his employer showing a net monthly income of approximately \$5,600. His wife's net income is approximately \$2,300. His monthly expenses total approximately \$4,600, leaving a monthly remainder of \$3,300. He has not cosigned for anyone else since this incident. (Tr. 59-60, 64; GE 2 (September 20, 2021 personal financial statement); AE C-D)

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 security 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 applies:

- (a) inability to satisfy debts.

Applicant agreed to cosign with BL on two mortgage loans that BL failed to pay and resulted in delinquency and ultimately foreclosure. I find the above disqualifying condition is 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 applies:

(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.

This is a case where the cynical axiom, “no good deed goes unpunished” proved to be true. Applicant helped BL out by cosigning on two mortgage loans so BL could purchase a house. He did this because his wife asked him to do so and because he felt a cultural obligation to do so. While several years went by with BL making the payments, at some point between 2014 and 2019, he stopped making the payments. He did not inform Applicant about the trouble he was experiencing and Applicant did not find out about the foreclosure until he was served with court papers. The property was foreclosed and sold in 2019 for more than the mortgage amount. Applicant received a 1099-C for the second mortgage, which he claimed on this year’s tax return. Otherwise, Applicant’s financial record is very good. This was a one-time poor decision based upon family and cultural loyalty, which is admirable, but not necessarily the wisest choice. However, I believe Applicant learned a hard lesson from this experience and his otherwise good financial history supports that this is unlikely to recur. Overall, his current reliability, trustworthiness, and judgment are in good standing. AG ¶ 20(a) applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a trustworthiness determination 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), the ultimate determination of whether to grant eligibility for a trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a sensitive position. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
Subparagraphs: 1.a - 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is granted.

Robert E. Coacher
Administrative Judge