

KEYWORD: Financial Considerations

DIGEST: Applicant has a history of overdue debts. He has made no attempt to resolve these debts. Mitigation has not been shown. A determination of trustworthiness and access to personal sensitive information is denied.

CASENO: 06-22278.h1

DATE:09/24/2007

DATE: September 24, 2007

_____)	
In re:)	
)	
-----)	ADP Case No. 06-22278
SSN: -----)	
)	
Applicant for ADP I/II/III Position)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Jeff Nagel, Esq., Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

Applicant has a history of overdue debts. He has made no attempt to resolve these debts.

Mitigation has not been shown. A determination of trustworthiness and access to personal sensitive information is denied.

STATEMENT OF THE CASE

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2R, Personnel Security Program (Regulation), dated January of 1987.

On March 19, 2007, DOHA, pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

In a signed and sworn statement, notarized on May 10, 2007, Applicant responded to the SOR allegations (RSOR) and requested a hearing before a DOHA Administrative Judge.

On June 29, 2007, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision,. A Notice of Hearing was issued to the parties on August 20, 2007, and the hearing was conducted on September 11, 2007.

At the hearing, Department Counsel offered seven documentary exhibits (Exhibits 1 through 7) and no witnesses were called. Applicant offered no documentary exhibits at the hearing but offered his own testimony and that of his mother. The record held open until September 19, 2007, to allow Applicant to offer additional documents. No documents were received by that date. The transcript (Tr) was received on September 19, 2007.

FINDINGS OF FACT

In the SOR, the Government alleges concern under Adjudicative Guideline F (Financial Considerations) of the Directive. The SOR contains six allegations, i.e., through 1.f., under Guideline F. In his RSOR, Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the live testimony, and upon due consideration of that evidence,

I make the following additional findings of fact:

Applicant is 26 years old. He is married, and he has one son. Applicant is a customer Service Representative for a defense contractor who seeks an ADP-I/II/III position on behalf of the Applicant.

Paragraph 1 (Guideline F - Financial Considerations)

The SOR lists six allegations of overdue debts, 1.a. through 1.f., under Adjudicative Guideline F. As stated above, Applicant's has admitted owing each of these debts under Guideline F, totaling approximately \$17,000, and at the time of the hearing none of these debts had been resolved or even reduced. The debts will be listed in the same order as they were in the SOR:

- 1.a. This overdue debt to Creditor 1 is cited in the SOR in the amount of \$564.
- 1.b. This overdue debt to Creditor 2 is cited in the SOR in the amount of \$114.
- 1.c. This overdue debt to Creditor 3 is cited in the SOR in the amount of \$1,576.
- 1.d. This overdue debt to Creditor 4 is cited in the SOR in the amount of \$350.
- 1.e. This overdue debt to Creditor 5 is cited in the SOR in the amount of \$292.
- 1.f. This overdue debt to Creditor 6 is cited in the SOR in the amount of \$14,943.

Applicant conceded that he was aware of the concern of the Government with these overdue debts, since he first received interrogatories regarding his finances in January 2007, and he became even more aware of the concern after he received the SOR in March 2007, but he did not make any attempt to resolve any of these debts, even the smallest ones, and he failed to contact any of the creditors. Applicant stated that he believed all of the debts had to resolved all at once, which he was not able to do, so he took no action.

When Applicant's mother testified, she stated that she had been advising her son ,for some time, to consult a credit counselor to see if Applicant could get help in resolving his overdue debts. Applicant could give no valid explanation as to why he had failed to follow his mother's advice.

Applicant did explain that debt 1.f., which is clearly the largest debt, arose as a result of his father having Applicant cosign a loan for a vehicle for his father. When Applicant's father failed to make payments on the vehicle, it was repossessed. Since Applicant's father then filed for bankruptcy, Applicant was responsible for the entire debt.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive,

each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.”

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that is speculative or conjectural in nature.

The Government must make out a case under Guideline F, which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his suitability for a sensitive Systems Position, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant is presently qualifies for a sensitive Systems Position.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the following with respect to Guideline F:

(Guideline F - Financial Considerations)

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's long history of indebtedness, and there is no evidence that Applicant has resolved these overdue debts or even made an attempt.

Applicant's overall conduct pertaining to his financial obligations falls within Financial

Considerations Disqualifying Condition (DC) 19. (a), and DC 19. (c), a history of not meeting financial obligations, and an inability or unwillingness to satisfy debts. While Mitigating Condition (MC) 20. (b) could be argued to apply, because the largest part of Applicant's debt arose through the actions of his father, Applicant has failed to take any action to attempt to resolve this overdue debt, thus failing to act responsibly, so this Mitigating Condition does not apply in this case. I do not find that any other Mitigating Condition is applicable to this case.

Until Applicant makes a good-faith effort to resolve his debts, and he can establish a record of financial responsibility and stability, concerns will continue to exist under Guideline F. I resolve Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant
Subparagraph 1.b.: Against Applicant
Subparagraph 1.c.: Against Applicant
Subparagraph 1.d.: Against Applicant
Subparagraph 1.e.: Against Applicant
Subparagraph 1.f.: Against Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a determination of trustworthiness, suitability and eligibility for the Applicant to hold a sensitive Systems Position (ADP-I/II/III).

Martin H. Mogul
Administrative Judge