



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



In the matter of:)
)
) ADP Case No. 12-04786
)
Applicant for Position of Trust)

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated trustworthiness concerns under Guideline F, financial considerations. Trustworthiness concerns under Guideline E, personal conduct, were withdrawn. Eligibility to occupy a position of trust is granted.

Statement of the Case

On March 28, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F and E. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's access to sensitive information. On May 5, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me on July 15, 2014. On July 23, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for August 14, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant Exhibits (AE) A through G. All proffered exhibits were admitted into evidence without objection. The prehearing guidance letter sent to Applicant was marked as Hearing Exhibit (HE 1) and Department Counsel's list of exhibits was marked as HE 2. The transcript (Tr.) of the hearing was received on August 25, 2014.

Procedural Matter

Department Counsel made a motion to withdraw the sole Guideline E allegation. Applicant had no objection to that motion. Department Counsel's motion was granted and the Guideline E allegation was withdrawn.¹

Findings of Fact

Applicant is a 40-year-old computer systems engineer. He has been working in the same position for different contractors since March 2011. He graduated from high school in 1992 and has completed about two years of college. He served in the U.S. Navy from 1993 to 1994 and was honorably discharged. He has been married twice. He married his current wife in 1999. He has two children, ages 16 and 21, from his first marriage and three children, ages 5, 6, and 13 from his current marriage. His oldest child is emancipated and his 16-year-old child from his first marriage lives with him. This is the first time Applicant has sought a position of trust.²

Under Guideline F, the SOR alleged that Applicant had 11 delinquent debts totaling \$40,246 (SOR ¶¶ 1.a–1.k). He admitted or denied the SOR allegations as indicated below.³

Applicant attributed his financial problems to a combination of reasons. In 2010, Applicant left a job that he had for about ten years to work for a competitor. He worked at that new job from September 2010 to January 2011, when he was laid off due to a slowdown in the economy. He was unemployed from January to March 2011.

¹ Tr. 11-12.

² Tr. 6, 9, 26-29, 31-33, 39-40; GE 1, 2; AE G.

³ Applicant's Answer to the SOR.

Applicant's wife also experienced lengthy periods of unemployment due to medical issues, but has been employed for the past four years.⁴

Applicant is an only child. His parents have been living with him since 2005. His father was injured in about 2001, suffers from degenerative disc disease, and has undergone multiple back and neck surgeries. He also had a heart attack and stroke and suffers from heart disease. His father has limited mobility and is unable to work. Applicant provides room and board for his parents and also helps them pay about \$300 to \$1,000 a month in medical bills.⁵

Applicant also testified that, when his ex-wife had custody of his two oldest children, she would advise healthcare providers to send the children's medical bills to Applicant without providing him any notice of the pending bills. He learned of the bills only after they were placed for collection. He indicated that the medical debts in SOR ¶¶ 1.f through 1.j fell into that category. He also testified that he shared the same first and last name and address as his father and stated that some of his father's debts were improperly placed on his credit report.⁶

SOR ¶ 1.a – collection account for \$2,808. This debt was for a loan on a repossessed vehicle. Applicant admitted this debt. It became delinquent after he lost his job in 2011. In December 2013, he entered into an agreement with the creditor to make monthly payments of \$100 until the debt was paid. He provided documentation showing that he made \$100 payments from January to April 2014 and a \$300 payment in July 2014. This debt is being resolved.⁷

SOR ¶ 1.b – collection account for \$1,554. This debt was a judgment that was entered against Applicant in July 2007. Applicant denied this debt. He claimed that he contacted the law firm handling this debt and was informed it had no record of him. He provided a letter from a law firm dated September 24, 2013, indicating that it had no record of him, but it did not identify any debt or indicate that the law firm was representing the judgment creditor. He also testified that he called the court inquiring about this judgment and learned that it was his father's debt. He also indicated that he submitted a dispute concerning this debt to the credit reporting agencies.⁸

⁴ Tr. 33-38; GE 2. Applicant testified that he was issued a letter of reprimand from his employer a couple of months before he was laid off. He was not laid off due to the incident that resulted in the letter of reprimand. See Tr. 34-35.

⁵ Tr. 29-31, 38-39; GE 2.

⁶ Tr. 39-45; GE 2.

⁷ Tr. 45-47; GE 2, 3, 4; AE A; Applicant's Answer to the SOR.

⁸ Tr. 50-57; GE 2, 3; AE B; Applicant's Answer to the SOR.

SOR ¶ 1.c – collection account for \$20,963. This debt was for judgment that was entered against Applicant in April 2009 for a loan on a repossessed vehicle. Applicant admitted this debt. In December 2013, he entered into an agreement with the creditor to make six monthly payments of \$2,066. In his Answer to the SOR, he provided documentation showing he made five of those payments from January to April 2014. At the hearing, he provided a court document showing this debt was satisfied.⁹

SOR ¶ 1.d – past-due account for \$378 with an outstanding balance of \$13,827. This debt was for student loans. Applicant denied this debt. He claimed that his student loans were transferred to another creditor. His credit reports confirm that transfer. He provided documents showing that he is current on his student loans.¹⁰

SOR ¶ 1.e – charged-off account for \$12,393. This debt was for a vehicle loan that had a date of last activity of March 2007. Applicant admitted this debt. He stated that the creditor would not enter into a repayment agreement due to the age of the debt. In his Answer to the SOR, he provided proof that he paid \$400 to the creditor in May 2014 and stated that he will continue to make monthly payments of \$100 until the debt is resolved. He did not provide proof of any additional payments at the hearing. He testified that, after paying off the debt in SOR ¶ 1.d, this debt was next on his list to begin paying.¹¹

SOR ¶¶ 1.f, 1.g, and 1.h – collection accounts for \$276, \$444, and \$116, respectively. Applicant admitted these medical debts that are being handled by the same creditor. The creditor advised him that it was not authorized to enter into a repayment agreement in the state of Applicant's residence. From January to July 2014, Applicant has been making monthly payments of \$100 towards these debts. He testified that these debts will be paid in October or November of this year.¹²

SOR ¶¶ 1.i and i.j – collection accounts for \$422 and \$242, respectively. Applicant admitted these medical debts that are being handled by the same creditor. In December 2013, Applicant entered into an agreement with the creditor to make monthly payments of \$75 until these debts were paid. He provided documentation showing that he made \$75 payments from January to July 2014. He testified that these debts will be paid in October or November of this year.¹³

⁹ Tr. 47-48; GE 2, 3; AE C; Applicant's Answer to the SOR.

¹⁰ Tr. 57-59; GE 2, 3, 4; AE D; Applicant's Answer to the SOR.

¹¹ Tr. 48-50; GE 2, 3; Applicant's Answer to the SOR.

¹² Tr. 40-45; GE 2, 3, 4; AE E; Applicant's Answer to the SOR.

¹³ Tr. 40-45; GE 2, 3, 4; AE F; Applicant's Answer to the SOR.

SOR ¶ 1.k – collection account for \$650. Applicant denied this debt and claimed he paid it. He provided a bank record showing two payments made in December 2013 and January 2014, totaling \$664. Although it could not be confirmed from the bank record that those payments were for this debt, no reason exists to doubt his claim of payment. I found Applicant to be a credible witness. Of note, the credit reports in the record reflected that he only owed this creditor \$53.¹⁴

Applicant's annual salary is about \$115,000. On December 17, 2013, Applicant prepared a Personal Financial Statement (PFS) that reflected his and his wife's total net monthly income was \$8,873, their total monthly expenses were \$4,460, and their total monthly debt payments were \$3,843, which left them a net monthly remainder of \$570. At the hearing, Applicant indicated that he and his wife had about \$950 in a checking account and she had about \$6,000 in a 401(k) account. He testified that, other than the debts alleged in the SOR, he has been current on all of his financial obligations since 2011. He has consulted with a company to assist him in resolving his financial problems. The company has assisted him in disputing some purported debts.¹⁵

Applicant submitted letters of reference that indicated he was a valued employee. The letters reflected that Applicant exhibited good moral character and that he is reliable and trustworthy.¹⁶

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, 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." (See Regulation ¶ C6.1.1.1.) In a memorandum dated November 19, 2004, the Deputy Under Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (See Regulation ¶ C8.2.1.)

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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept."

¹⁴ GE 2; Applicant's Answer to the SOR.

¹⁵ Tr. 58-71.

¹⁶ Tr. 60-61; AE G.

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 access to [sensitive] information will be resolved in favor of 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.

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 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unable to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Five mitigating conditions under AG ¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

After being laid off from a job, Applicant was unemployed from January to March 2011. His wife experienced periods of unemployment due to her medical problems. Applicant provides support to his parents because his father is unemployed due to health problems. Applicant's, his wife's, and his father's unemployment were conditions beyond Applicant's control that contributed to his financial problems. For AG ¶ 20(b) to fully apply, an applicant must act responsibly under the circumstances. Applicant and his wife have been employed for the last three years. Most of the action Applicant has taken to resolve the alleged debts occurred since December 2013. Because it is unclear from the record whether Applicant could have taken action earlier to resolve the debts, he receives only partial credit under AG ¶ 20(b).

Since December 2013, Applicant has taken significant steps to resolve his financial problems. He paid the debts in SOR ¶¶ 1.c and 1.k and instituted repayment plans for the debts in SOR ¶¶ 1.a, 1.f, 1.g, 1.h, 1.i, and 1.j. He is current on his student loans (SOR ¶ 1.d) and indicated the debt in SOR ¶ 1.e is next on his list to pay. He is currently living within his means and has not incurred any new delinquent debts since obtaining his current job. He has consulted with a company to help him resolve his financial problems. He has shown that his financial problems are being resolved, are

under control, and are unlikely to recur. AG ¶¶ 20(c) and 20(d) apply. AG ¶ 20(a) partially applies.

Applicant submitted sufficient information to dispute the debt in SOR ¶ 1.b. AG ¶ 20(e) applies to that debt.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

The ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c).

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(a) were addressed under that guideline, but some warrant additional comment.

Applicant served honorably in the Navy. He is a valued employee and a responsible son, husband, and parent. He has taken sufficient action to bring his financial problems under control. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude that Applicant mitigated the trustworthiness concerns under financial considerations guideline.

Formal Findings

Formal findings on the SOR allegations:

| | |
|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a – 1.k: | For Applicant |

Paragraph 2, Guideline E: WITHDRAWN

Subparagraph 2.a: Withdrawn

Decision

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

James F. Duffy
Administrative Judge