



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 12-05561
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

04/03/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s student loans total almost \$80,000. They came due after he left school in 2002, but he has not made any payments or otherwise addressed those debts since 2007. Despite having the means to do so, Applicant also has not paid or otherwise tried to resolve six other debts, which total about \$2,300. Applicant’s request for eligibility to occupy a position of trust is denied.

Statement of the Case

On February 16, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for public trust position as part of his job with a defense contractor. After reviewing the results of the ensuing background investigation, Department of Defense (DOD) adjudicators were unable to determine that

it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.¹

On September 12, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guideline (AG)² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on January 19, 2015, and I convened a hearing on February 10, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibit (Ax.) A. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 26, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$81,481 for eight delinquent or past-due debts (SOR 1.a - 1.h). Most of the total debt consists of two delinquent student loans (SOR 1.b and 1.c) totaling \$79,171. Applicant admitted all of the debts except SOR 1.d, which he claims was paid in 2012 or 2013. He also disputed SOR 1.g, an account which he claimed he cancelled but for which he was still charged. In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact.

Applicant is 37 years old and is employed by a defense contractor in a position that requires eligibility for a position of trust, because his employer supports management of the health care system used by members of the military. Applicant must be deemed suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. Applicant was hired by his current employer in February 2012. (Gx. 1)

Applicant and his wife have been married since August 2007 and have three children (ages 8, 6 and 1) together. Applicant's wife is a preschool teacher. Since about 2003, Applicant has worked in the information technology (IT) field. In 2011, he left an IT job with a cable television company by mutual agreement with his employer over concerns about his performance. While employed there, he received free unlimited cable television service at his home. However, after he left, he was charged for those services and still owes the cable company \$702. (Gx. 1 - 3; Tr. 45)

Applicant attended college between 1997 and 2002, but did not finish his degree. He left school for personal reasons, but never returned to school once those matters

¹ Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

² The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

were resolved. The debts alleged at SOR 1.b and 1.c are delinquent student loans Applicant obtained for his college education. (Gx. 1 - 4; Tr. 26 - 27)

When Applicant submitted his EQIP, he disclosed his delinquent student loans. The remaining SOR allegations are based on subsequent credit reports and were discussed during a subject interview of Applicant by a Government investigator in March 2012. At the interview, Applicant stated that he would obtain a copy of his credit report and make payment arrangements with his creditors within 90 days. However, at his hearing, Applicant did not provide any information showing that he has acted to pay or otherwise resolve his past-due debts, most of which are less than \$500 each and have been delinquent since before he married. (Gx. 1; Gx. 4)

Applicant and his wife earn about \$4,600 in net monthly income. According to a personal financial statement (PFS) obtained from Applicant by DOD adjudicators in February 2014, Applicant had about \$375 remaining each month after expenses, including two monthly car payments. However, since then one of his cars was stolen and, after his insurance covered the loss, he no longer has to make the \$477 car payment he listed in his PFS. This should leave about \$850 remaining each month; but Applicant did not explain why he has not at least paid some of his smaller delinquencies. (Gx. 1 and 4; Tr. 29 - 31)

Applicant disputes responsibility for the debt for unpaid rent or repairs to an apartment in 2012 at SOR 1.e. He also claimed the debt at SOR 1.f was satisfied through a wage garnishment, and that he should not have to pay the debt at SOR 1.g, stating that he cancelled the account but was charged for it anyway. Applicant did not provide any documentation to support his claims. (Answer; Gx. 4; Tr. 37 - 38)

Applicant has a good reputation in the community. He volunteers as a coach for youth sports and is active in his church. Applicant is regarded as having good moral character, and is considered honest and trustworthy. (Ax. A)

Policies

Positions designated as ADP I/II/III³ are classified as “sensitive positions.”⁴ In deciding whether a person should be assigned to an ADP position, it must be determined that his or her loyalty, reliability, and trustworthiness are such that it is “clearly consistent with the interests of national security” to do so.⁵ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the

³ As defined in Chapter 3 and Appendix 10 of DOD Regulation 5200.2-R, as amended (Regulation).

⁴ Regulation, ¶ C3.6.15.

⁵ Regulation, ¶ C6.1.1.1.

Directive before any adverse determination may be made.⁶ Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ and must include consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines.

Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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 presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion.

A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a trustworthiness concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

⁶ Regulation, ¶ C8.2.1.

⁷ Directive. 6.3.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*).

I have also considered the following mitigating conditions available under AG ¶ 20:

(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;

(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

(f) the affluence resulted from a legal source of income.

None of these mitigating conditions is applicable to the facts and circumstances presented. AG ¶ 20(f) is not pertinent here as no facts or allegations were presented regarding unexplained affluence. The other AG ¶ 20 mitigating conditions do not apply because Applicant did not present information to establish them. He has made no payments on his student loans since 2007, and there is no plan in place to resolve his

debts. Applicant disputes at least two of his debts, but he did not corroborate the basis for those disputes. Applicant is not expected to be debt free; however, his failure to take any action regarding his past-due debts, especially after stating in his subject interview three years ago that he would do so, reasonably undermines the Government's confidence in his reliability and trustworthiness. Applicant has not mitigated the trustworthiness concerns raised by his financial problems.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Specifically, I note that Applicant is a good employee and is active in his community. However, this positive information is not sufficient to overcome the adverse inferences raised by his financial problems. The Government's information raised reasonable doubts about Applicant's suitability for a position of trust. Because protection of the interests of national security is the principal goal of these adjudications, those doubts must be resolved against the granting of such eligibility.

Formal Findings

Formal findings 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.h:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is denied.

MATTHEW E. MALONE
Administrative Judge