



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



In the matter of:)	
)	
)	ADP Case No. 12-07196
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On January 6, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated July 23, 2015.¹ Applicant received the FORM on August 17, 2015. He did not submit additional information for the record. I received the case assignment on December 1, 2015. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

¹The Government submitted eight items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted allegations under Guideline F, ¶¶ 1.a-1.w with explanations. He also provided additional information.

Applicant is 30 years old. He is a transaction process lead employee with an insurance company. Applicant graduated from high school in June 2003. (Item 3) Applicant never married and has no children. (Item 3) He has been employed with his current employer since 2011. This is his first application for a position of trust, which he completed on March 15, 2012. (Item 3)

The SOR alleges 23 delinquent debts totaling approximately \$28,944. These debts include charged-off accounts, medical collection accounts, and student loans. (Item 1) Credit reports confirm the debts. (Items 4, 5, and 6)

Applicant explained in his SOR Answer that he filed for Chapter 7 bankruptcy in October 2014. (Item 2) The debts were discharged in February 2015. (Item 4) He acknowledged that bankruptcy is not the preferred method of reconciliation for debt, and he wanted to pay his debts. However, he noted that his income exceeded his expenses. He felt that this was the only viable means to “clean up his credit report” in a timely manner. (Item 2) He completed the requisite financial counseling. He believes he has a new set of skills that will enable him to be more financially responsible.

In 2012, during an investigative interview, Applicant explained that he has been gainfully employed since 2008. The delinquent debts stem from as early as 2007. There is no information in the record that Applicant made any payments or had a plan to resolve the debts before the filing of bankruptcy. Applicant did not present any information to explain the specific cause of the delinquent debts. He did not present a personal financial statement. The majority of the SOR debts are included in the bankruptcy. Applicant stated that the debts in 1.r (\$4,186) and 1.t (\$2,747) for student loans were paid in full in 2012 with a tax refund. He provided a sheet that showed they presently have a zero balance. (Answer to SOR)

Applicant noted that he has been in a supervisory position for three years. He considers himself a reliable and trustworthy individual who can be trusted with sensitive information. (Item 2)

Policies

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision.

Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

Applicant's admissions and credit reports establish his delinquent debts and his credit reports confirm the debts. He filed for chapter 7 bankruptcy in 2014, and the debts were discharged in 2015. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant filed for chapter 7 bankruptcy in 2014 and the debts were discharged in 2015. This is a legitimate means of resolving debts, but the debts were recently discharged. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant provided no explanation other than his expenses exceeded his income. He has been employed since 2008. He had every intention to pay his debts. He filed for bankruptcy and his debts were discharged in 2015. In response to the FORM, Applicant did not present new information regarding the cause of the delinquent debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant paid two student loans. He received the requisite financial counseling when he filed for bankruptcy. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. The bankruptcy filing is a legal means of resolving debts, but there is no information in the record that Applicant tried to resolve some of the smaller debts before the 2014. Consequently, I find that there are not clear indications that his financial problems are being resolved and are under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the 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.

Under AG ¶ 2(c), 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 30 years old. He has worked for his current employer since 2011. He has been employed since 2008. He did not provide a specific explanation for his delinquent debts, other than his writing that expenses exceeded his income. He stated that he wanted to pay his debts. He filed for chapter 7 bankruptcy in 2014 and the debts were discharged in 2015. This is a legitimate way to resolve debts. He paid his two student loans. However, he has not provided information to show good-faith efforts to pay some of the smaller debts before filing for bankruptcy in 2014. He has not demonstrated a track record of financial responsibility and good judgment. He has not mitigated the security concerns under the financial considerations guideline.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of Applicant's trustworthiness does not necessarily indicate anything adverse about his character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u-1.w:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a position of public trust. Eligibility for access to a position of public trust is denied.

NOREEN A. LYNCH.
Administrative Judge