



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



In the matter of:)
)
[Name Redacted])
)
) ADP Case No. 12-10415
)
Applicant for Public Trust Position)

Appearances

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

12/08/2015

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the trustworthiness concerns under financial considerations, drug involvement, and personal conduct. Eligibility for access to sensitive information is granted.

Statement of the Case

On May 12, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on June 19, 2015, and requested a hearing before a DOHA administrative judge. Department Counsel was ready to proceed on September 2, 2015. The case was forwarded to the Hearing Office and assigned to me

on September 2, 2015. On September 11, 2015, a Notice of Hearing was sent out scheduling the hearing for October 7, 2015. The hearing was held as scheduled. Department Counsel offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5 without objection. Applicant testified and offered five exhibits which were admitted as Applicant Exhibits (AE) A – E without objection. The record was held open until October 21, 2015, to allow Applicant to submit additional exhibits. Applicant timely offered 8 exhibits which were admitted as AE F – AE M without objection. Department Counsel's response to Applicant's post-hearing documents is marked as Hearing Exhibit (HE) I. The transcript (Tr) was received on October 15, 2015. Based on the record evidence and testimony presented in this case, a position of trustworthiness is granted.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor seeking a position of trustworthiness. He works two full-time jobs. He has worked for Company Number One since 2013. He has worked for Company Number Two since March 2012. He is applying for a position of trustworthiness through Company Number Two. He received a bachelor's degree in computer science in 1999. He is divorced and has a 20-year-old daughter. (Tr. 23-32; Gov 1)

Financial Considerations

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on June 25, 2012, for a position of public trust. (Item 2) A subsequent background investigation revealed that Applicant had incurred three delinquent debts. Applicant was a co-signer on a mortgage loan for his brother which was in foreclosure status with a total loan balance of \$479,928. (SOR ¶ 1.a: Gov 2 at 1; Gov 5 at 3) Applicant also had a delinquent medical account in the amount of \$570 (SOR ¶ 1.b: Gov 3 at 9); and a \$536 collection account for emergency transport services. (SOR ¶ 1.c: Gov 3 at 9; Gov 4 at 2)

In his Response to the SOR, Applicant admits that he was a cosigner on his brother's mortgage. He was unaware that the account was past due in the amount of \$158,549 and that it was in foreclosure status with a loan balance of \$479,928. He admits that he owed the debts alleged in SOR ¶¶ 1.b and 1.c, but that the accounts were settled. He attached a copy of his credit report, dated May 28, 2015. The debts alleged in SOR ¶¶ 1.b and 1.c are no longer listed in his credit report. I marked and admitted the May 2015 credit report as AE E.

During the hearing, Applicant testified that the debts alleged in SOR ¶¶ 1.b and 1.c related to an emergency room visit Applicant made in 2008. One debt was medical and the other was for emergency transport. Applicant testified the debt alleged in SOR ¶ 1.b was paid in full, but the hospital and collection agency would not give Applicant anything in writing. The debt is no longer listed in his May 28, 2015 credit report or the credit report dated October 1, 2015, presented by the Government. (Tr. 21-22; Gov 5;

AE E) I conclude the debt alleged in SOR ¶ 1.b is paid. Applicant provided proof that he resolved the debt alleged in SOR ¶ 1.c. (Tr. 8, 14; AE A)

Applicant's brother purchased a home in 2008. Applicant agreed to be a co-signer on his mortgage in order for his brother to get a better interest rate. Applicant understood that if his brother did not pay the mortgage he would be responsible. However, Applicant testified that the house was his brother's responsibility and Applicant let him be responsible for the mortgage payments. Sometime in 2009 or 2010, Applicant's brother told Applicant he was behind on his mortgage and asked Applicant for money to cover the mortgage. Applicant gave his brother some money. At one point he gave his brother \$5,000. Applicant believed that his brother was making the mortgage payments. He did not realize how far behind his brother was on the mortgage until he was interviewed on June 25, 2012, during his background investigation. (Tr. 32-40; 44-45, 49; Gov 4 at 1)

The current status of the mortgage is that Applicant and his brother applied for a loan modification in May 2015. Part of the agreement was for three payments of \$3,134.03 to be made on July 1, 2015, August 1, 2015, and September 1, 2015. Applicant's brother made the three payments and the mortgage has been modified. (AE B; AE K) Applicant testified that once the mortgage loan is modified, his brother will be able to refinance the mortgage in his own name. Applicant prefers that his name be taken off the mortgage as a co-signer. (Tr. 51, 55) Applicant understands that as a co-signer, if the mortgage modification was unsuccessful, he would be responsible for the mortgage. He still believes the mortgage is his brother's responsibility. (Tr. 56-58)

Applicant is generous to his family members. Aside from cosigning the mortgage for his one brother, he also cosigned on a car loan for his twin brother. His sister and her two children reside with him. Aside from his brother's mortgage debt, Applicant is current on all of his financial obligations. (See Gov 5 and AE E) He has worked two full-time jobs over the past three years. His W-2s for 2014 list total wages of \$224,882. (AE L) He provided a copy of his budget. His net monthly income is \$11,895. His monthly expenses total \$5,315. After expenses he has \$6,580 left over in discretionary income. (AE M)

Personal Conduct

In his e-QIP application, dated June 25, 2012, Applicant answered, "No" in response to the questions in Section 26 – Financial Record – Delinquency Involving Routine Accounts. (Gov 1) He did not list the debts alleged in SOR ¶¶ 1.a - 1.c. Applicant did not list his delinquent accounts because he was not aware of them when he completed the security clearance application. He believed all of the medical debts related to his emergency room visit in 2008 were paid by his health insurance company. While he was aware that his brother was behind in his mortgage payments in the past, he was not aware the full extent of his delinquency. (Tr. 40, 44-45, 49; Response to SOR; Gov 4) When Applicant was interviewed on July 26, 2012, he was asked about the debts. That was the first time he learned of all three debts. He cooperated with the investigator. Applicant's brother provided a statement indicating that he has not kept

Applicant updated on the status of his home. He underwent a long negotiation process over several years, but states that an agreement has been reached and the mortgage is in good standing. (AE I) I find Applicant did not intend to falsify his trustworthiness application by omitting his delinquent debts.

Whole-Person Factors

Applicant is a hard worker and is well respected at work as indicated in an e-mail from his manager. (AE H) Two of Applicant's friends who have known him since college wrote letters on his behalf. They describe Applicant as being committed to family and friends. Applicant is described as trustworthy, honest, and responsible. (AE C –D)

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.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (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.” 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.”

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:

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 [sensitive or] classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or careless in properly handling and safeguarding sensitive information.

Here the evidence supports a conclusion that the Applicant has encountered some financial issues in the past few years. The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are applicable in this case:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

At the time the SOR was issued, Applicant had three unresolved delinquent accounts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

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;

AG ¶ 20(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; and

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial delinquencies appear to be the result of oversight and misunderstandings. He was not aware of the two medical-related debts alleged in SOR ¶¶ 1.b and 1.c. Once he was made aware of them, he resolved the accounts. The debt of primary concern is the delinquent mortgage account that was pending foreclosure with a balance of \$479,928. Applicant agreed to act as cosigner on a mortgage loan for his brother. Even though he served as a co-signer, Applicant assumed his brother would be responsible for the debt. He occasionally gave money to his brother when his brother said he was behind on his mortgage payments. Applicant was not proactive in monitoring his brother's mortgage payments. As a result, he was not fully aware of the extent of his brother's delinquency.

I find AG ¶ 20(a) applies because Applicant is financially responsible when handling his personal debts. Unfortunately, he cosigned on a mortgage for his brother who was not as financially responsible. The mortgage issue and the two minor medical debts do not raise issues about Applicant's trustworthiness, reliability, or good judgment.

AG ¶ 20(c) applies because Applicant took steps to resolve his financial issues and the problem appears to be under control. The mortgage underwent a loan modification and the loan is out of foreclosure and in repayment status at this point. As co-signer, Applicant is aware that he will have to assume responsibility for the mortgage should his brother default on the mortgage. He has sufficient income to make the mortgage payment if this is a possibility.

AG ¶ 20(d) applies because Applicant made a good-faith effort to resolve his delinquent debts. The debts alleged in SOR ¶¶ 1.b and 1.c are resolved. Applicant's brother's mortgage has been modified and is no longer in foreclosure status. There are no longer any negative entries in his credit report aside from the mortgage.

Applicant is in control of his financial situation. While Applicant hopes that his brother will refinance the mortgage in his own name, the possibility of this happening is unknown. However, Applicant is able to step in as co-signer on the mortgage should his brother default again. The concerns under financial considerations are mitigated.

Guideline E – Personal Conduct

The trustworthiness concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect [sensitive] information. Of special interest is any failure to provide truthful and candid answers during the [trustworthiness determination] process or any other failure to cooperate with the [trustworthiness determination] process.

The following disqualifying condition potentially applies to Applicant's case:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant is alleged to have deliberately omitted his financial delinquencies in response to Section 26 of his e-QIP application dated June 25, 2012. Applicant testified that he was not aware that his brother was seriously delinquent in his mortgage payments and was not aware of the two medical debts until he was told about them during his trustworthiness background investigation interview. While Applicant's brother asked him for money in the past because he needed to pay his mortgage, Applicant was not proactively monitoring the status of the mortgage. He assumed that the debt was his brother's responsibility and that his brother would make the mortgage payments. I find Applicant's explanation credible and conclude that he did not deliberately omit the debts alleged in SOR ¶¶ 1.a – 1.c on his e-QIP application.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all the 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.

I considered the favorable information from Applicant's supervisor, and his two friends. If not for his brother's failure to timely make his mortgage payments, Applicant's financial situation is stable. He works two full-time jobs and earns sufficient income to meet his financial obligations. Applicant has learned a difficult lesson regarding the responsibility of co-signing on a mortgage. While a loan modification has been successful, he understands he will be responsible for the mortgage as long he is a co-signer on the loan. He has the financial capability to pay the mortgage should his brother default in the future. Applicant developed a plan to resolve his delinquent debts. He will likely be more proactive in monitoring his brother's mortgage payment history now that he has learned that delinquent debts can raise issues of trustworthiness or security significance.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant's application for a trustworthiness position should be granted.

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.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Erin C. Hogan
Administrative Judge