



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



In the matter of:)
)
) ADP Case No. 13-00584
)
)
Applicant for Public Trust Position)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2013

Decision

MASON, Paul J., Administrative Judge:

Four out of five of Applicant’s delinquent debts are over three years old. He was informed of the Government’s concern about his debts in March 2011. Yet, over two years passed before he took documented action to address any of the debts. His two-hour session with a financial counselor is insufficient to conclude his debts are being resolved or under the control. Eligibility for access to a sensitive position is denied.

Statement of the Case

On June 12, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) recommending that Applicant’s eligibility to occupy an automated data processing (ADP) position be denied based on concerns related to the guideline for financial considerations (Guideline F). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).¹

Applicant furnished his notarized answer to the SOR on September 8, 2013. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on September 23, 2013. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on October 3, 2013. He provided a response on October 23, 2013, and a supplementary response on November 6, 2013. The Government did not object to Applicant's responses to the FORM. The case was assigned to me on November 18, 2013.

Findings of Fact

The SOR contains five allegations related to the financial considerations guideline. Applicant admitted owing the delinquent accounts. The total amount of delinquent debt when the SOR was published in June 2013 was \$85,453.

Applicant is 57 years old and single. He served in the United States Air Force (USAF) from November 1975 to November 1979. He also served in the United States Navy (USN) from May 1980 to May 1981. Since July 2010, he has been employed as a beneficiary service representative. He received his first security clearance in 1975.

According to credit agency reports dated September 28, 2010, and April 11, 2013, and Applicant's OPM interview, his financial problems began in about June 2008 when he moved overseas to operate a pizza business. No additional information was provided to explain why he left his job as billing manager where he had been employed since March 2003. After his departure, a \$14,285 equity line of credit identified at SOR 1.b was charged off in July 2008. A mortgage deficiency balance of \$60,000 identified at SOR 1.d became delinquent in February 2009, when Applicant could not keep his house in the United States consistently rented with two renters to cover the mortgage. He indicated that he convinced the lender to foreclose on the property in April 2011 to evict a problem tenant. He intended to remortgage the property and lease to new tenants. (Item 8)

A telecommunications account identified at SOR 1.a, totaling \$383, became delinquent in November 2009. A second telecommunications account identified at SOR 1.e, totaling \$785, became delinquent in August 2010. Applicant told the OPM interviewer in March 2011 that he was unable to resolve the two telecommunications accounts before moving overseas in June 2008. He informed the interviewer of his

¹ In a memorandum from the Office of the Deputy Undersecretary of Defense for Counterintelligence and Security, dated November 19, 2004, the Defense Office of Hearings and Appeals (DOHA) is directed to apply the provisions of the Directive, including Enclosure 2, the adjudicative guidelines, in making trustworthiness determinations,

intention to contact the two creditors of the telecommunication accounts and pay the debts. A collection account of \$10,000, identified at SOR 1.c, became delinquent in August 2012. (Item 2, credit report dated June 28, 2013; Items 6, 7, 8)

In his OPM interview in March 2011, Applicant indicated he did not make much of a profit from the pizza business between June 2008 and July 2010, when he began working for his current employer. At the time of the OPM interview, Applicant, still the owner of the pizza business, was earning a good profit even though he was working part-time. He did not disclose his pizza earnings in his April 2013 personal financial statement. In explaining why it took him time to pay the listed delinquent debts, he indicated that he is paid in American dollars, but must meet his expenses in euros. The fluctuating exchange rate results in lost income and less money available to pay debts. (Items 8, 9)

Between June 2008 and early 2013, Applicant submitted no documentation of action to address the delinquent accounts listed in the SOR. An April 2013 credit bureau report discloses that he apparently filed an official dispute of a collection account identified in SOR 1.c. (Item 7) In April 2013, he denied the SOR 1.c collection account belonged to him. (Item 9)

In his answer to the SOR, Applicant provided documentation dated July 16, 2013, of a \$200 settlement of the telecommunications account identified at SOR 1.a. Regarding the line of credit account identified in SOR 1.b, in his October 2013 response to the FORM, Applicant reiterated his claim made in July 2013, that he had reached an agreement with the creditor to pay \$100 a month. No documentation of payments were furnished. The account remains unpaid.

On October 10, 2010, Applicant was notified by the collection account holder in SOR 1.c that he was required to pay \$250 by October 31, 2013, and \$150 a month beginning in November 2013. He paid the \$250 on October 31, 2013. The balance of the account remains unpaid.

Applicant provided documentation dated July 11, 2013, verifying that he owes nothing to the lender identified in SOR 1.d. (Item 2; Response to FORM, July 13, 2013, letter from lender) Concerning the telecommunications account identified in SOR 1.e, Applicant claimed in July 2013 that he would pay the account in full by July 26, 2013. The collection agency (SOR 1.e) informed Applicant on October 8, 2013, that his \$450 settlement payment was due on October 18, 2013. He provided documentation establishing that he settled the delinquent account by credit card on October 23, 2013. In a supplemental response to the FORM, he provided a \$100 payment to a creditor not listed in the SOR. (Response to FORM)

Character Evidence

In a character statement from the president of Applicant's employer dated March 19, 2013, she indicated that Applicant has been employed as a beneficiary service

representative since July 2010. Based on the comments from his customers and coworkers, she believes his performance has been exemplary. He is a team player who has occasionally assisted at other employment sites on the continent. (Item 5)

On July 16, 2013, Applicant met with a financial counselor for two hours. He was advised to inform one of the credit agencies that he was working overseas and he was taking steps to pay his collections accounts. The counselor was scheduled to meet him for a second session two weeks later. No documentation of the follow-up meeting was submitted.

Applicant considers himself a responsible employee as demonstrated by his performance evaluations for the past three years. His performance evaluation dated June 24, 2013, reflects that he “frequently exceeded expectations” based on reliably and responsibly completing tasks in a timely manner. He was praised for his team-player attitude. Applicant believes his responsibility is also demonstrated by his performance with a previous employer as a billing manager for five years. He is aware of the financial guideline that requires an applicant to live within his means and responsibly take care of his financial obligations. (Item 2)

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. The standard that must be met for assignment to sensitive duties is that based on all available information, the person’s reliability, and trustworthiness in performing sensitive duties is clearly consistent with the interests of national security.

When evaluating an individual’s eligibility for a public trust position, an administrative judge must apply the provisions of the Directive, including the Adjudicative Guidelines (AG). The guidelines should be applied in a commonsense manner, in the context of the nine general factors of the whole-person concept.

In addition to the AG, the Directive outlines procedures that must be followed in a trustworthiness decision. 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 proven the evidence admitted by an applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion to establish his or her eligibility for a public trust position. Any doubt about the applicant’s eligibility must be resolved in favor of national security.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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 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.

There are two pertinent disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant moved overseas in June 2008. Then, five accounts totaling \$85,453, became delinquent by June 2013. Perplexing is the fact that Applicant took no documented action to address the debts until early 2013, even after indicating in March 2011, when he was working full-time for his current employer, that he was earning a good profit from his secondary income as a part-time pizza business owner. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions 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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); 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) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Even after the \$60,000 mortgage deficiency balance (SOR 1.d) and the two telecommunications accounts are subtracted from Applicant's total delinquent debt, he still owes \$24,285, and has furnished insufficient evidence to conclude his indebtedness will not continue or recur. Applicant provided no explanation for his decision to move overseas to operate a business after his five-year employment as a billing manager. Any assumption that I make, *i.e.*, inability to find employment in the United States, would be based on speculation rather than evidence. Regardless of the reasons for Applicant's move, he still had a duty to manage his financial obligations in a responsible manner. Rather than keeping the creditors informed in the intervening years of his inability to pay his debts, he did nothing until early 2013, when he initially disputed the collection account identified at SOR 1.d. While he finally sought financial counseling after he received the SOR in June 2013, there are no clear indications that Applicant's financial problems are being resolved or are under control. AG ¶¶ 20(a), 20(b), and 20(c) do not apply. The limited mitigation Applicant receives under AG ¶ 20(d) for paying two telecommunications accounts and partially paying the collection account

identified at SOR 1.c is undermined by Applicant's stated intention to resolve the two telecommunication accounts more than two years earlier.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

As set forth in AG ¶ 2(c), the final trustworthiness decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person.

Applicant is 57 years old and single. Before his current employment, he worked as a billing manager for five years and believes he carried out his job duties in a responsible manner. Since July 2010, he has been employed as a billing service representative. His current overall performance evaluation frequently meets job element expectations based on his reliability and responsibility. He finishes projects in a timely manner and he is a team player.

The mitigating evidence supporting Applicant's eligibility for a sensitive position is insufficient to overcome his history of not meeting financial obligations. He has not demonstrated the same characteristics of reliability and responsibility in managing his financial obligations that he has in executing his job responsibilities over the years. His March 2011 OPM interview establishes that he was aware of most of the listed accounts when he accepted ownership of a pizza operation overseas in June 2008. Significantly, he informed the interviewer that he would attempt to contact the two telecommunication creditors and pay the debts. Applicant, who had been working full-time for his current employer since July 2010, also told the interviewer that he was finally earning a good profit from his pizza business. Yet, more than two more years passed before he took documented action to address the listed debts.

In April 2013, Applicant disclosed for the first time that the negative exchange rate between the American dollar and the euro reduced the amount of available income to pay the listed debts. However, the profit that Applicant was earning from his pizza operation, which he did not disclose in his March 2011 PFS, should have been available to augment whatever shortfall the negative exchange rate created. Judging by the totality of the evidence, I do not find Applicant's claim credible. Given his delay in

addressing his indebtedness until after he received the SOR in June 2013, and the lack of a meaningful track record of payments to satisfy the delinquent debts, I am unable to conclude that he has his financial obligations under control. Having weighed and balanced the cited disqualifying and mitigating conditions with the nine factors of the whole-person concept, Applicant has not mitigated the trustworthiness security concerns arising under the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.d, 1.e:	For Applicant
Subparagraphs 1.b, 1.c:	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 eligibility for access to sensitive information. Applicant's request for a public trust position is denied.

Paul J. Mason
Administrative Judge