



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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XXXXXXXXXXXXXXXXXX) ADP Case No. 13-01023
)
)
Applicant for Public Trust Position)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

04/15/2014

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his electronic Questionnaires for Public Trust Position (e-QIP), on May 1, 2013. On October 16, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F (Financial Considerations) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 30, 2013 (Answer), and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 17, 2014, and I received the case assignment on January 18, 2014. DOHA issued a notice of hearing on February 20, 2014, and I convened the hearing as scheduled on March 19, 2014. The government offered Exhibits (Ex.) 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through F, without objection. DOHA received the transcript of

the hearing (Tr.) on March 26, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

Findings of Fact

In his Answer Applicant admitted the factual allegations in ¶¶ 1.a to 1.e, 1.g, and 1.h of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.f. He also provided additional information to support his request for eligibility for a public trust position.

Applicant is 35 years old. He is married and does not have any children. He works for a defense contractor. Applicant is a college graduate. (Tr. 13-17; Exhibit 1)

Applicant claims his delinquent debt dates from the early 2000s when he was a college student. He incurred these debts and could not repay them. They total \$10,325. Now the \$4,000 net monthly income he and his wife earn from their jobs allows him to settle some debts and arrange a debt repayment plan for the remaining debts. He did dispute two debts and they are not on his current credit report. He and his wife do not have any credit cards. They own one car. (Tr. 19-34, 37; Exhibits 2, 3, 5, B-F)

Applicant placed three debts in a debt repayment plan operated by a debt manager. Those debts are the ones in Subparagraph 1.a (\$3,198 to a bank that has a lien since 2002), Subparagraph 1.d (\$922 owed to a credit card company), and Subparagraph 1.e (\$1,201 owed to a bank). Applicant admits these debts. He pays \$540 into the plan each month by automatic deduction. He started these payments in January 2014. Applicant expects these debts to be paid by May 2016. These debts are being resolved. (Tr. 23-25, 28, 29, 40; Exhibits 2, 3, 5, B-F)

Applicant paid three debts by settling them. The first debt addressed is that of Subparagraph 1.b, being a debt for \$1,527 that he paid. The debt was settled for \$600 with two payments of \$300 each being made in November and December 2013. The credit report of March 16, 2014 (Exhibit 5), shows the debt was paid for less than the full amount. This debt is resolved. (Tr. 24-27; Exhibits 2, 3, 5, B-F)

Applicant paid the second debt found in Subparagraph 1.c for \$2,161 owed on a credit card. This debt was settled for \$831.66. Applicant was required to make two payments of \$600 in February 2014 and then \$231.66 in March 2014. His bank statement shows the payments were made. The March 16, 2014 credit report shows the debt being paid at that time under a partial payment agreement. This debt is resolved. (Tr. 27, 28; Exhibits 2, 3, 5, D)

Applicant paid the delinquent debt in Subparagraph 1.g for \$385 owed to a department store. He settled it for \$185.54, making several payments. The final payment was for \$45. That payment is shown on the collector's payment screen printed from its website. The balance owed is zero dollars. This debt is resolved. (Tr. 29, 30, 41; Exhibits 2, 3, 5, C)

The next debt listed in the SOR was for \$710 in Subparagraph 1.f. This debt is owed to a cellular telephone company. Applicant disputed the debt with the credit reporting agencies on their website and had it removed from his credit reports. He does not have a written copy of his dispute document. (Tr. 29, 41; Exhibits 2, 3, 5, E)

Applicant was not able to repay the debt listed in Subparagraph 1.h for \$221 owed to a cable television provider. Applicant contends he called the company but was told they did not have a record of any debt owed to them. He does not find that debt on his current credit report. He disputed this debt. (Tr. 30, 31, 41; Exhibit 2, 3, 5, E)

Applicant's student loans are not delinquent. They are consolidated and he pays \$225 monthly on that account. (Tr. 32; Exhibit A)

Applicant received credit counseling and financial information from his debt repayment plan representative. Nothing he received was a formal credit counseling course, but he did prepare a budget he tries to follow as a result of the information. He did not receive a certificate of completion of any formal credit course. (Tr. 34, 43, 44)

Applicant testified in a forthright manner. He was credible and frank in his explanation of his debts and the actions he had taken to resolve them.

Policies

Positions designated as ADP I/II/III 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 over-arching adjudicative goal is a fair, impartial and common sense 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline 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] 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying.

AG ¶ 19 (b), “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to repay the debt” applies. Applicant incurred the debt while in college and did not repay it for ten years.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated some delinquent debt while in college and in his younger years. He was unable to pay some obligations for about ten years.

AG ¶ 19 (e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis” applies. While in college and after graduation Applicant spent more money than he was able to repay within a reasonable period of time.

The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial worries arose between about 2000 and 2001. He accumulated some delinquent debt due to his inattention to his spending habits in relationship to his income. These circumstances are no longer extant. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Evidence that “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” is potentially mitigating under AG ¶ 20(c).

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant received some type of financial counseling and resolved six of the delinquent debts, either by payment or settlement. Two debts he disputed and they were removed from his credit record.

AG ¶ 20(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” applies. Applicant disputed two debts because he honestly believed he did not owe them. The credit reporting agencies removed them from his credit record.

I conclude these potentially mitigating conditions apply.

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 the 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. When these problems first began, Applicant was a young man, still in college. (See AG ¶ 2(a)(4).) He accumulated debt due to circumstances largely beyond his control, mainly due to his jobs after college that did not pay him sufficiently to resolve delinquent debts he accumulated during college. (See AG ¶ 2(a)(2).)

Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) Of course, the issue is not simply whether all his debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a position of public trust.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from his financial considerations.

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

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

PHILIP S. HOWE
Administrative Judge