



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



In the matter of:)	
)	
)	ADP Case No. 14-02754
)	
Applicant for a Public Trust Position)	

Appearances

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

03/23/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a public trust position to work in the defense industry. Applicant has an unpaid \$14,000 judgment outstanding since July 2012. He also deliberately omitted the judgement from his December 2013 application for a position of public trust. Applicant's eligibility to occupy a position of trust is denied.

Statement of the Case

On November 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under the financial considerations and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with national security to grant or continue Applicant's access to sensitive information and recommended that the case be submitted to an administrative judge for

¹ This case is adjudicated under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG replace the guidelines in Enclosure 2 to the Directive.

a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on September 2, 2015. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on September 25, 2015, and did not respond. The case was assigned to me on November 10, 2015. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 5 and 7, without objection. GE 6 is omitted for the reasons explained below.

Procedural Issues

GE 6 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during his January 2014 investigation. The interview is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions Applicant that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM does not demonstrate that he understands the concepts of authentication, or waiver and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 6 is inadmissible and I have not considered it.

Findings of Fact

Applicant, 50, has worked for a federal contractor since January 2006. In his position as a customer service representative, Applicant has access to personally identifiable information (PII), which requires him to seek eligibility to occupy a position of trust. On his December 2013 application for eligibility, Applicant disclosed a 2003 conviction for driving under the influence. He did not disclose any other derogatory information. The ensuing investigation revealed that Applicant had an outstanding \$14,000 judgment issued against him in July 2012. The judgment is the only allegation under the financial considerations guideline.³

In his answer to the SOR, Applicant admitted the he was responsible for the judgment, which was obtained by an insurance company. With the exception of the judgment, the credit reports in the record show that Applicant has a limited, but positive credit history dating back to 1998. The SOR also alleges that Applicant deliberately failed to disclose the judgment on his position of trust application in response to questions about derogatory financial information. Applicant explained the omission in his answer to the SOR:⁴

² GE 3.

³ GE 4,5.

⁴ GE 3,5,7.

I apologize for providing misinformation. I did not feel there was a need for my employer to know my legal proceeding. Having read Guidelines E [Personal Conduct] and F [Financial Considerations,] I now understand the significance of my error. I am happy to answer any additional questions and provide information in order to be granted this automated data processing security clearance.⁵

Applicant did not provide any additional information about the circumstances of the judgment or its current status.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”⁶ “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.”⁷ 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.⁸ An administrative judge’s objective is a fair, impartial, and commonsense decision that embraces all available, reliable information about the person, past and present, favorable and unfavorable.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable decision.

A person who seeks access to a public trust position 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.

⁵ GE 3.

⁶ DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation) ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁷ Regulation ¶ C6.1.1.1.

⁸ See Regulation ¶ C8.2.1.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁹

The SOR alleges that Applicant owes approximately \$14,000 on an unpaid judgment issued against him in 2012. The record supports a *prima facie* case that Applicant has a history of not meeting his financial obligations and that he has demonstrated an unwillingness to do so.¹⁰ Applicant did not submit any evidence to merit the application of the any of the financial considerations mitigating conditions.

Personal Conduct

Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an individual’s reliability, trustworthiness, and ability to protect classified information.¹¹ The SOR alleges that Applicant deliberately failed to disclose the 2012 judgment on his position of trust application. Proof of omission alone does not establish or prove an applicant’s intent or state of mind when he completed the application. Here, the Applicant provided direct evidence of his intent to withhold his derogatory financial information from the government. Applicant admitted that he chose not to disclose his financial information because he did not want his employer to know about the legal action taken against him. This is sufficient to support a finding that Applicant deliberately falsified his December 2013 position of trust application.¹²

An applicant is expected to provide full, frank, and candid responses to inquiries from the government at all phases of the adjudication process. Applicant did not provide any evidence to mitigate the concerns raised by his omission. None of the personal conduct mitigating conditions apply.

Accordingly, doubts remain about Applicant’s security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. Ultimately, Applicant failed to meet his burdens of production and persuasion. Because the security

⁹ AG ¶ 18.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ AG ¶ 15.

¹² AG ¶ 16(a).

concerns raised in the SOR remain, following *Egan*¹³ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge

¹³ *Navy v. Egan*, 484 U.S. 518 (1988).