



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



In the matter of:)
)
) ADP Case No. 14-03053
)
Applicant for a Public Trust Position)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2016

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. Although the financial concerns raised in the Statement Of Reasons (SOR) are mitigated, those raised by Applicant's intentional falsification of his position of trust application remain. Accordingly, Applicant's eligibility for access to sensitive information is denied.

Statement of the Case

On October 14, 2014, the Department of Defense (DOD) issued a Statement of Reasons SOR detailing trustworthiness concerns under the financial considerations guideline.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 a determination whether to revoke or deny Applicant's eligibility to occupy a public trust position.

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.

Applicant timely answered the SOR and requested a hearing. On August 6, 2015, I issued a pre-hearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.² The parties complied with the terms of the order.³ At the hearing, convened on August 25, 2015, I admitted Government's Exhibits (GE) 1 through 5, and Applicant's Exhibits (AE) A through C, without objection. After the hearing, Applicant submitted AE D, which was also admitted without objection.⁴ I received the transcript (Tr.) on September 2, 2015.

Findings of Fact

Applicant, 53, has worked for a federal contractor since January 2013. In his position as a systems analyst, Applicant has access to personally identifiable information (PII), which requires him to seek eligibility for a position of trust. He previously held a security clearance, without incident, while serving in the Army between 1982 and 1987. He completed his most recent position of trust application in April 2013. The ensuing investigation revealed that Applicant owed approximately \$58,700 on 13 delinquent accounts.⁵

Applicant's financial problems began in 2007. His mother became very ill and required financial help. Until her death in 2009, Applicant paid between \$200 and \$300 of his mother's expenses each month, sometimes at the expense of his own financial obligations. He also incurred expenses making 100-mile round-trip commute to her home three times a week. In 2009, Applicant's employer began cutting back on the overtime hours he had come to expect since 2000, resulting in an unexpected decrease in income. As a result, Applicant had difficulty keeping up with his credit card payments and his mortgage. In 2012, he was laid off from the job he held for the previous 12 years after declining to relocate to another state on the opposite coast. Applicant worked in a contract position for one year earning \$25,000 less in annual income. Between 2009 and 2014, Applicant testified that he struggled to meet all of his financial obligations. As a result of his financial problems, Applicant fell into a depression for which he sought medical help.⁶

When he completed his position of trust application in April 2013, Applicant did not disclose any of his delinquent accounts in response to Section 26: Financial Record. In May 2013, Applicant was interviewed by a background investigator. During the interview, the investigator reviewed Applicant's answers to financial questions on the position of trust application. Applicant confirmed that his answers on the application

² The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

³ The discovery letter, dated July 6, 2015 is appended to the record as HE II.

⁴ The e-mails regarding the admissibility of the applicant's exhibits are included in the record as HE III.

⁵ Tr. 15, 19; GE 1, 3-5; AE A.

⁶ Tr. 16-17, 22-24, 34-35, 37-38; AE C.

were correct and that he did not have any delinquent accounts. After being confronted with a copy of a May 2013 credit report containing derogatory financial information, Applicant disclosed his history of financial problems.⁷

At hearing, Applicant admitted that he lied on his position of trust application because he wanted to protect his job. After starting his current employment earning \$89,000 annually, he started to feel financially secure and did not want to do anything to put his job in jeopardy. Applicant also admitted that he initially lied to the investigator during his interview because he was trying to protect himself.⁸

In the summer of 2014, Applicant applied for Chapter 7 bankruptcy protection, seeking to discharge \$48,600 in debt. The petition was successfully discharged in February 2015. He was also able to obtain a mortgage loan modification. Now, Applicant believes his finances are stable. He lives within his means and does not have any credit cards. After paying his recurring bills, Applicant has over \$1,000 in disposable income. He has \$110,000 in retirement savings.⁹

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”¹⁰ “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.”¹¹ 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.¹² 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.

⁷ GE 2.

⁸ Tr. 18, 20-22, 35-36, 40-41.

⁹ Tr. 29-30; AE B, D.

¹⁰ 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.

¹¹ Regulation ¶ C6.1.1.1.

¹² See Regulation ¶ C8.2.1.

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.

Analysis

Guideline F, Financial Considerations

Unresolved delinquent debt is a serious 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 sensitive information.”¹³ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Applicant admitted the SOR allegations that he owed over \$58,000 in delinquent debt. He also admits being unable to meet his financial obligations between 2009 and 2014. The record establishes a *prima facie* case that Applicant had a history of not meeting his financial obligations and that he had an inability to do so.¹⁴ However, Applicant’s financial problems were caused by events beyond his control. Between 2007 and 2009, Applicant experienced an increase in monthly expenses as he cared for his ailing mother, and a decrease in income between 2009 and 2013 that made it difficult for him to satisfy his debts. While Applicant receives partial mitigation under AG ¶ 20(b), he did not establish that he acted responsibly in light of his circumstances. It does not appear that Applicant took any steps to resolve his delinquent accounts before filing for bankruptcy protection in 2014. The discharge of Applicant’s bankruptcy petition provided him a clean financial slate. It appears that his finances are stable and no longer present a concern.¹⁵

Personal Conduct

Although Applicant’s finances are no longer an issue, concerns about his personal conduct remain. The SOR alleges that Applicant falsified his April 2013 position of trust application by intentionally failing to disclose any derogatory information in response to Section 26: Financial Record. Applicant admits that he intentionally lied

¹³ AG ¶ 18.

¹⁴ AG ¶ 19(a) and (c).

¹⁵ See, AG ¶ 20(a).

on the application to protect his employment.¹⁶ His omissions are not minor. Although it is not alleged, Applicant admitted to lying to the background investigator during his subject interview about his financial record. A lie he did not correct until he was confronted with evidence of his delinquent accounts. This prevents any finding of mitigation. Applicant's behavior raises doubts about whether he would resolve conflicts of interests between his duties in a position of trust and his self-interests in favor of protecting the interests of national security.

Based on the record, doubts remain about Appellant's current reliability, trustworthiness, and ability to protect sensitive information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant failed to present sufficient information to mitigate the trustworthiness and reliability concerns raised by his conduct.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.m:	For 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

¹⁶ AG ¶ 16(a).