



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



In the matter of:)	
)	
)	ADP Case No. 14-00468
)	
Applicant for Public Trust Position)	

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

08/26/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 18 charged-off, placed-for-collection, or delinquent accounts, which totaled approximately \$80,000. Applicant failed to rebut or mitigate the financial considerations trustworthiness concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive information and eligibility for a public trust position is denied.

Statement of the Case

On March 20, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended

(Regulation), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On March 18, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated May 12, 2014. The FORM contained six attachments. On May 27, 2014, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Department Counsel did not object to Applicant's undated response. On July 18, 2014, I was assigned the case.

Findings of Fact

Applicant admits all of the SOR debts. He asserts he has contacted what he referred to as a "debt collection agency" to begin monthly payments on his delinquent student loans. (FORM Answer) He is seeking other means to address his remaining delinquent debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 36-year-old who has been working for a defense contractor since August 2013, and is seeking to maintain a public trust position. From May 2003 to October 2009 he worked part-time and had a second part-time job from July 2008 through July 2009. He worked full-time from June 2009 through October 2011. In October 2011, he obtained a different full-time job, which he held until obtaining his current full-time job. At various times between September 2007 and March 2011, he attended various colleges and universities. Since May 2012 he has been taking courses from an on-line college. In 2008, he married.

On Applicant's August 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he was receiving information and counseling from a debt counseling firm. (Item 5) This was not further explained. In his e-QIP, he did not indicate he was delinquent on any debts.

Applicant has two student loans, which total approximately \$9,500, that have been placed for collection. He has five additional student loans totaling approximately \$65,000 that are 120 days or more past due. He owes approximately \$4,600 on nine collection accounts and more than \$600 on two charged-off accounts. He owes \$326 on a medical account (SOR 1.j) which is unpaid, but not alleged to be delinquent. (Item 6) He has provided no documentation showing any payments on any of his delinquent obligations.

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 Defense Office of Hearings and Appeals (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 sensitive information 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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The evidence supports a conclusion Applicant has a history of financial problems. Applicant has 18 delinquent accounts and one unpaid medical account that totaled approximately \$80,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control. He has been full-time employed since June 2009. He provided no documentation showing any payments on any of his debts. Even the nine smaller debts of less than \$500 each remain unpaid. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling other than the statement on his e-QIP that he was receiving financial counseling. He provided no information as to what he had learned from that counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. There is no showing of a good-faith effort to satisfy the debts.

Applicant asserts he has contacted a debt collection agency to help him in making monthly payments on his delinquent student loans. He is also seeking ways to address his other delinquent debts. He provided no documentation as to what the debt collection agency was to do or had done. The debts remain unpaid and he has provided no documentation establishing a repayment plan.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid and because they remain unpaid, they are considered recent. There is nothing in the record supporting that the debts were incurred under unusual conditions not likely to be repeated. Applicant has failed to act timely or responsibly under the circumstances, which casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant has been fully employed for the past five years. He failed to assert or establish events beyond his control which caused his financial problems.

The mitigating condition listed in AG ¶ 20(c) does not apply. A mere statement on his e-QIP that he was receiving financial counseling is insufficient for this mitigating factor to apply. Additionally, there is no clear showing that his financial obligations are being addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document any payments on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account. He admitted all of the SOR debts.

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. The majority of the debts set forth in the SOR were not incurred on luxuries, but for student loans. This is not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. However, Applicant has failed to make payment on those loans or on his other delinquent SOR debts.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts which would mitigate the financial considerations security

concerns. He failed to provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on his paragraph of explanation in response to the FORM, he failed to mitigate the financial considerations security concerns.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant did not mitigate the financial considerations trustworthiness concerns.

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

Subparagraphs 1.a – 1.s: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information and occupying a public trust position is denied.

CLAUDE R. HEINY II
Administrative Judge