



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-00671
)	
Applicant for Position of Trust)	

Appearances

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

12/08/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred delinquent debts through circumstances beyond his control. His current finances are sound and he showed good judgment in resolving his debts in a timely and organized manner. It is unlikely he will experience financial problems in the future. His request for eligibility to occupy a position of trust is granted.

Statement of the Case

On August 27, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position¹ for his job with a defense contractor. After reviewing the results of the ensuing background

¹ As defined in Chapter 3 and Appendix 10 of DOD Regulation 5220.2-R, as amended (Regulation).

investigation and his responses to interrogatories from DOD adjudicators, it could not be determined that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.²

On June 6, 2014, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed through the adjudicative guidelines (AG)³ for financial considerations (Guideline F). On July 7, 2014, Applicant responded to the SOR (Answer) and requested a hearing.

The case was assigned to me on September 29, 2014, and I convened a hearing on October 22, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant presented testified and presented Applicant's Exhibits (Ax.) A - I. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on November 7, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant did not file his federal tax returns for tax years 2006 through 2010 until 2013 (SOR 1.a); that he did not file his state tax returns for tax years 2005 through 2010 until 2013 (SOR 1.b); and that he owes \$44,366 for three delinquent or past-due debts (SOR 1.c - 1.e). In response, Applicant admitted with explanations all of the SOR allegations. In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact:

Applicant is 41 years old and works for a national health insurance company on a contract that supports the administration of medical insurance benefits to U.S. military members and their families. He works as an applications development systems analyst. He was hired for his current position in August 2013. His performance evaluations in September 2013, February 2014, and September 2014 reflect outstanding technical expertise, high value to the contract, excellent reliability, and solid performance. (Gx. 1; Gx. 2; Ax. H)

Applicant worked in the same job for the same employer and as a subcontractor to that employer from October 2002 until August 2007. He left his employment by mutual agreement with his supervisors because of his attendance and performance problems. Applicant has since been diagnosed with, and is receiving treatment for a panic disorder and agoraphobia. Applicant's condition prevents him from driving, and makes ordinary social and work situations difficult or impossible to endure. (Answer; Gx. 1; Gx. 2; Ax. F; Tr. 14 - 15)

² Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

³ The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

Applicant began receiving professional mental health treatment in February 2006. Until May 2013, he saw several different doctors and there were gaps in his treatment and variations in the treatments and medications they provided. Applicant first saw his current doctor for about eight months in 2010, and began seeing him again in May 2013. Applicant is able to succeed in his current job because he has a better understanding of his condition and is being treated effectively for it. The job location is close enough to his house that he does not have to drive, and he has a trusting relationship with his coworkers and a different supervisor than before. (Answer; Gx. 1; Gx. 2; Ax. F; Tr. 58 - 65)

For the next six years after leaving his position in 2007, Applicant was generally unemployed because he was unable to find a job he could perform given his psychological limitations. Occasionally, he found part-time independent work as an applications developer. He supported himself for about three years using his personal savings, but eventually turned to credit cards to make ends meet. He applied for disability benefits but was unsuccessful. At the time he submitted his EQIP, his house was in foreclosure and he was attempting to resolve that obligation through a short sale. This debt is alleged at SOR 1.e. In July 2014, he borrowed \$20,000 from his father and was able to bring his mortgage current. The loan was formalized in a written agreement whereby Applicant is repaying his father twice monthly through automatic debits from Applicant's bank account. Although Applicant has good cash flow, a single large infusion of cash was needed to satisfy the mortgage lender's terms and cease foreclosure. (Answer; Gx. 1; Gx. 2; Gx. 3 - 4; Ax. E; Ax. I; Tr. 43 - 44)

As alleged in SOR 1.a and 1.b, Applicant did not file his federal or state income tax returns between 2005 and 2010. In response to DOD interrogatories, Applicant established that he had filed all of his past-due returns and is up to date on his income tax obligations in general. At his hearing, he provided additional documentation of his resolution of his tax issues and that he does not owe any unpaid taxes as a result of his late filings. (Gx. 2; Ax. A; Ax. B)

Applicant has settled the credit card debts alleged in SOR 1.c and 1.d. He has also begun to rebuild his savings. A personal financial statement provided with his response to interrogatories shows he has at least \$2,000 remaining each month after all of his monthly expenses. Since he started repaying the loan to his father, he estimates he has about \$1,000 remaining each month. He is meticulous in his approach to his finances, as shown by a loan he made to help a friend. As with the loan he received from his father, Applicant reduced the terms of the loan to writing and obtained the recipient's signature to formalize the agreement. (Gx. 2; Ax. C ; Ax. D; Ax. G; Tr. 56)

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.”⁴ In deciding whether a person should be assigned to an ADP position, it must be determined that his or her loyalty, reliability, and trustworthiness are such that it is “clearly consistent with the interests of national security” to do so.⁵ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁶

The Directive requires that each decision be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion. A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her own. Any reasonable doubt

⁴ Regulation, ¶ C3.6.15.

⁵ Regulation, ¶ C6.1.1.1.

⁶ Regulation, ¶ C8.2.1.

⁷ Directive. 6.3.

about an applicant's suitability for access should be resolved in favor of the Government.

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a trustworthiness concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows Applicant was unable, not unwilling, to repay his past-due debts.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

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

All of these mitigating conditions apply. Applicant's financial difficulties occurred because he lost his job. He lost the job because he has a mental health issue that was

not then being properly managed. He remained unemployed or underemployed for six years, and he was able to get by for a few years on savings he already had. He is now being treated for his mental health problems and is fortunate to have returned to his old job, which is a perfect fit for him. Since he has been earning steady income again, he has resolved all of the financial issues addressed in the SOR. Before he lost his job in 2007, Applicant managed his money in a responsible and prudent manner. Now that he is again employed, he has resumed saving his money and meeting all of his financial obligations. The circumstances that led to his financial problems either no longer exist or are being addressed in a way that will help avoid similar problems in the future. Applicant has mitigated the trustworthiness concerns raised by his financial problems.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant has demonstrated excellent judgment and maturity in addressing his financial problems. He has taken responsibility for addressing the underlying causes of his earlier difficulties. A fair and commonsense assessment of all available information shows that the Government's concerns about Applicant's trustworthiness have been satisfied.

Formal Findings

Formal findings 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

Subparagraphs 1.a - 1.e: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is granted.

MATTHEW E. MALONE
Administrative Judge