



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



In the matter of:)	
)	
)	ADP Case No. 14-00786
)	
Applicant for Public Trust Position)	

Appearances

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

10/22/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On May 1, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations) and Guideline B (Foreign Influence).¹ The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated July 14, 2014.² Applicant received the FORM on July 29, 2014. He did not submit additional information for the record. I received the case assignment on October 9, 2014. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

¹The Government chose not to present a case under Guideline B. Thus, the SOR 2.a allegation is found in favor of Applicant.

²The Government submitted six items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted all of the allegations under Guideline F, ¶¶ 1.a-1.c with explanations. (Item 2)

Applicant is 39 years old. He is a disbursement supervisor employed with an insurance company. Applicant is married, and he and his wife are expecting their first child in 2014. He graduated from high school and attended college until December 2004. (Item 4) Applicant has been employed with his current employer since October 21, 2013. On October 14, 2013, Applicant submitted an official application for eligibility for a position of trust. (Item 3)

The SOR alleges three delinquent debts totaling approximately \$200,000. These debts include two mortgage loan debts and a collection account. (Item 1) Credit reports confirm the debts. (Items 5, and 6)

Applicant explained in his Answer that his mortgage debts are no longer being serviced by the lenders. (Item 2) He elaborated that he purchased a property in 2006, which went to foreclosure in March 2008. The property had two mortgages. Applicant bought the home as a rental property, but due to the faltering economy, he was not able to find renters or obtain a short sale for the house. He could not afford the rental home mortgage in allegation SOR 1.a. He noted that he did multiple searches to contact the lender, but was not successful. He states that he acquired a telephone number for the lender and believes they are out of business. (Item 2)

Applicant obtained two mortgages on the same property. He called the lender noted in allegation SOR 1.b because he thought they might have some information on the mortgage loan. A representative told him that the loan is “no longer in the files.” When Applicant followed up with the representative a few days later he learned that the loan was not in the system. (Item 2) Applicant confirmed with the representative that the mortgage loan was foreclosed in September 2008. He notes that after seven years, the account will disappear from any reports. (Item 2)

As for the allegation in SOR 1. c, Applicant explained that the collection account in the amount of \$348 was paid on May 28, 2014. He states that it was for an outstanding ticket that he had forgotten and late fees had been assessed. (Item 4) He listed a receipt number, but did not provide the actual receipt.

There is no information in the record concerning Applicant's income or expenses. There is no record of financial counseling. Applicant did not provide any documentation to support his claims concerning the mortgage loans. He also did not elaborate on his particular circumstances at the time of the 2006 purchase in order to evaluate if the situation was one beyond his control. He also did not provide any record of what payments were made on the two mortgage loans.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 the persons’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is “clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶C8.2.1

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government based on 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.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.” The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant eligibility for a public trust position.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.

Applicant's admissions and credit reports establish his delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of security clearance adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. He has not provided documentation to support his assertion concerning the two mortgage loans, but relies on a period of time when they will not appear on his credit report. The delinquent obligations remain. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant provided no information to evaluate the circumstances and determine whether he acted responsibly. He still has a large amount of debt that he has neither resolved nor shown that he is in the process of resolving. In response to the FORM, Applicant did not present new documentation or an update on the status of his debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant had a receipt number for the debt in SOR 1.c. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. He has not addressed the other debts in a timely manner.

Consequently, I find that there are not clear indications that his financial problems are being resolved and are under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the 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 position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 39 years old. He has worked for his current employer since 2013. He purchased a home as a rental property in 2006, but by 2008 the home was foreclosed. Applicant did not explain his specific situation concerning his purchase. Therefore, it is not possible to evaluate the circumstances and consider mitigation for any conditions that were beyond his control. He noted the lack of renters and short sale attempt, but he did not provide documentation. The fact that he claimed the loan providers are no longer "servicing" the loans and that in a seven-year period, the accounts will not appear on a credit report is not sufficient to mitigate the security concerns under the financial considerations guideline.

Because Applicant chose to have this matter handled without a hearing, I am unable to evaluate his credibility. In relying on the written record, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and fully mitigate the financial considerations concerns.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of his trustworthiness does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

NOREEN A. LYNCH.
Administrative Judge