



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



In the matter of:)
)
) ADP Case No. 14-01253
)
)
Applicant for Position of Trust)

Appearances

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

11/03/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial delinquencies stem from a failed business in the mid-2000s, and a major health problem followed by a marital separation in 2010. Applicant has made some progress reducing his delinquencies. However, in light of his failure to execute a Chapter 13 bankruptcy order in 2007 and the amount of the unresolved delinquencies, he has not made enough progress for me to conclude that he has mitigated the trustworthiness concern. Applicant’s eligibility to occupy an automatic data processing (ADP) position is denied.

Statement of the Case

On May 22, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant 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 Directive 5220.6, *Defense Industrial*

Personnel Security Clearance Review Program (Directive) (January 2, 1992), as amended, and the adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant answered the SOR on June 20, 2014, admitting the allegations and requesting a decision on the written record. On July 21, 2014, Department Counsel prepared a File of Relevant Materials (FORM). Applicant received the FORM on August 4, 2014, and submitted a reply on September 5, 2014. The case was assigned to me on September 17, 2014.

Findings of Fact

Applicant is a 53-year-old man with two adult children. He has been separated from his current spouse since September 2010. (Item 5 at 16) Three previous marriages ended in divorce. The extent of Applicant's education is unknown from the record. He served in the U.S. Navy from 1979 to 1984, and was honorably discharged. (Item 5 at 36) Applicant has been working for a defense contractor as a systems programmer since 2004. (Item 5 at 10)

In July 2005, Applicant and his fiancée, whom he subsequently married two months later, purchased a home. They financed the purchase with a \$138,400 mortgage. (Item 6 at 7) In October 2005, Applicant and his wife purchased two tanning and fitness businesses. They financed the purchase of these businesses by taking out a second mortgage on their home in the amount of \$64,000. (Item 7 at 6)

Shortly after purchasing the businesses, the national economic downturn occurred. Applicant and his wife began increasingly using business credit cards to pay their bills. Also, they fell behind on their mortgage loans. (Item 4 at 4)

In July 2007, Applicant filed for Chapter 13 bankruptcy protection, as referenced in subparagraph 1.a. (Item 7 at 1) The amount of debt included in the court-ordered bankruptcy payment plan is unknown from the record. Applicant was ordered to pay \$700 per month to the bankruptcy trustee. At or about the time Applicant filed for Chapter 13 bankruptcy protection, his home was foreclosed upon. (Item 6 at 7)

In July 2010, the court dismissed the bankruptcy petition because Applicant failed to make the requisite payments. (Item 8) It is unknown from the record how many payments Applicant made before the bankruptcy petition was dismissed.

One month after the court dismissed the bankruptcy petition, Applicant was hospitalized with a severe stomach problem. (Item 4 at 4) Subsequently, he remained in the hospital for one month, undergoing three stomach surgeries. Upon his discharge, he was unable to work for six weeks. (Item 4 at 4)

Shortly after Applicant returned to work, his wife left him. (Item 4 at 5) By November 2013, Applicant had incurred approximately \$217,000 of delinquent debt, including both home mortgage loans (subparagraphs 1.b and 1.c), a delinquent car loan

(subparagraph 1.d), two business credit cards (subparagraphs 1.e and 1.f), and seven medical bills (subparagraphs 1.g through 1.m). The principal mortgage loan totals \$138,400 and the second mortgage totals \$68,500. The principal mortgage was satisfied when the home was sold after foreclosure. (Item 6 at 7) The foreclosure occurred at or about the period Applicant's finances were in Chapter 13 bankruptcy status. The second mortgage loan was included in the failed Chapter 13 bankruptcy petition. (Item 6 at 4) It remains outstanding. (Item 6 at 4)

Subparagraph 1.d, totalling \$4,503, has been transferred to a collection agency. Applicant contends that he negotiated a deal with the collection agency whereupon he will pay this debt together with another debt, unlisted in the SOR, that had also been transferred to this collection agency. (Response at 1) Although these debts are owed to the same creditor, neither constitutes the debt listed in subparagraph 1.d.¹

Applicant has satisfied the medical bills listed in subparagraphs 1.i, 1.l, and 1.m. (Response at 9-10) Applicant has attempted unsuccessfully to contact the creditors listed in subparagraphs 1.e and 1.k. Applicant's contention that he has paid subparagraphs 1.f, 1.g, and 1.j is unsubstantiated. Per Applicant, the creditor listed in subparagraph 1.h is a collection agent that has no record of any debt that Applicant owes their agency. In sum, Applicant has satisfied \$750 of delinquent debt, and approximately \$76,500 remains outstanding.

There is no record evidence of Applicant's annual salary. Moreover, there is no record evidence of whether Applicant maintains a budget or of whether he has ever attended financial counseling.

Policies

When evaluating an applicant's trustworthiness, the 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, these guidelines are applied together with the factors listed in the adjudicative process. 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.

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

¹Their account numbers do not match the account number for subparagraph 1.d. (*compare* Item 6 at 5 with Response at 6,8)

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Over the years, Applicant has incurred more than \$200,000 of delinquent debt, the majority of which remains outstanding. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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

Applicant’s financial problems did not occur because of profligate spending. Instead, they began after his business failed in the mid-2000s, and were later exacerbated by a medical emergency and a marital separation. Applicant has satisfied the debts listed in subparagraphs 1.i, 1.l, and 1.m. I resolve these subparagraphs in his favor.

Applicant’s satisfaction of the aforementioned delinquencies demonstrates that he has been acting responsibly in an attempt to address his financial delinquencies, and represents a clear indication that Applicant is making a good-faith effort toward resolving his financial problems. AG ¶¶ 20(b), 20(c), and 20(d) apply.

Conversely, Applicant's progress, though encouraging, is minimal compared to the amount of his outstanding delinquencies. Applicant contends that part of the second mortgage loan was reduced when the bank sold his home after its foreclosure, and that by implication, his total outstanding amount may not be as high as his credit report indicates. However, he provided no evidence substantiating this contention. Moreover, he failed to comply with a Chapter 13 bankruptcy order, leading to its July 2010 dismissal. Under these circumstances, I cannot conclude, that Applicant will resolve the remaining debts. AG ¶ 20(a) does not apply.

Whole-Person Concept

Under the whole-person concept, 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.

The circumstances surrounding Applicant's accrual of delinquent debts are partially mitigating. In addition, there is some presence of rehabilitation, as Applicant has satisfied a few of his delinquent debts, and appears to be actively working to satisfy the remaining delinquencies. However, Applicant failed to execute a Chapter 13 bankruptcy plan leading to its dismissal approximately four years ago. His failure to pay debts through the bankruptcy plan raises doubt about whether he will finish satisfying his delinquent debts. Also, I remain troubled by the unresolved status of the second mortgage loan. Under these circumstances, the likelihood that Applicant may not be able to satisfy these remaining delinquencies remains unacceptably high. Consequently, I am unable to conclude that he possesses the requisite reliability and trustworthiness to occupy an ADP position.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.h: | Against Applicant |
| Subparagraph 1.i: | For Applicant |

Subparagraphs 1.j-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	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 eligibility to occupy an ADP position. Applicant's eligibility to occupy an ADP position is denied.

MARC E. CURRY
Administrative Judge