



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



In the matter of:)
)
) ADP Case No. 14-01703
)
)
Applicant for Public Trust Position)

Appearances

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

01/22/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate financial considerations and personal conduct trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On August 11, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guidelines F, financial considerations, and E, personal conduct. The action was taken under Department of Defense 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* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On September 15, 2014, Applicant submitted an answer to the SOR, and he elected to have his case decided on the written record. On October 15, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on October 17, 2014, and it was received on

November 11, 2014. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. The case was assigned to me on January 12, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 47 years old. He is divorced and has one daughter. He served in the Army from 1992 to 1998. He has been employed by a federal contractor since February 2013.

SOR ¶¶ 1.a, 1.b, 1.f, 1.g, 1.h, 1.i, 1.k, 1.l, 1.m, 1.n, 1.o, and 1.p are delinquent consumer and medical debts totaling approximately \$6,996. SOR ¶ 1.j is a judgment for \$793. SOR ¶¶ 1.c, 1.d and 1.e are student loan debts totaling approximately \$10,467. Credit reports support the allegations.¹

On his security clearance application (SCA) dated February 27, 2013, Applicant answered “no” in response to Question 26, which asked if he was currently over 120 days delinquent on any debt. He answered “no” in response to whether he had a judgment entered against him.²

During Applicant’s background interview he was asked if he had any delinquent credit issues and he responded that he had some, but did not know what accounts. He understood that he had credit issues, but could not recall specifically what they were. He did not recall there was a judgment entered against him. When confronted by the investigator with his delinquent accounts Applicant agreed they belonged to him.³

Applicant indicated during his background investigation that he attended an online university from February 2008 to October 2008 and earned his associates degree. He indicated that he was divorced in 2003 and pays \$400 monthly in child support. He has been employed with some temporary agencies in the past, but it was not enough to allow him to meet his expenses, so his debts became delinquent. During his background interview, he indicated to the investigator that he did not disclose he had any financial issues in his case papers, but he knew he did. He was unable to recall all of his delinquencies, so he did not list any of them, but knew he had them. In response to the FORM, Applicant stated he did not disclose his delinquent debts on his SCA because he did not take the time to accurately review his financial status at that time.

¹ Items 7, 8, 9.

² Item 5.

³ Item 6.

During his interview he specifically acknowledged he owed the debts that are alleged in the SOR.⁴

During his background interview, Applicant explained that the reason he failed to appear in court in about May 2009, to resolve a check he had written which was returned for insufficient funds, was because he did not have the money to pay for the check. He eventually went to court and paid the amount owed and the case was dismissed.⁵

In his response to the SOR dated September 15, 2014, Applicant stated that he was working with a credit counselor to clear all of his indebtedness, and he would forward documentation when it was available. In his response to the FORM, Applicant provided a letter stating as of September 18, 2014, he was enrolled in a credit optimization program. The company was submitting disputes and investigations to the credit bureaus to have erroneous accounts removed.⁶

Applicant experienced periods of unemployment from April 2010 to July 2010 and again from April 2011 to October 2011.⁷

It is unclear if Applicant has been making payments on his students loans and if so if they are consistent. He did not submit any other documents to show he has paid or resolved any of his delinquent debts.

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 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

⁴ Response to FORM.

⁵ Item 6.

⁶ Item 4; Response to FORM.

⁷ Item 5.

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 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."

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 to obtain 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 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

The trustworthiness concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

In his answer to the SOR, Applicant admitted he owed all of the debts alleged. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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 has numerous delinquent debts that are unresolved. He did not contact a credit service until after he received the SOR. Despite admitting to all the debts and acknowledging specifically he owed the debts, he is now disputing them all. He has not provided a reasonable basis to dispute the legitimacy of each past-due debt. He has not provided documented proof to substantiate the basis of his dispute. I find AG ¶¶ 20(a) and 20(e) do not apply. Applicant provided no evidence that he has made a good-faith effort to pay his overdue creditors. If he has been making payments towards student loans, he has not provided proof as to their current status. AG ¶ 20(d) does not apply. Applicant has sought assistance with a credit agency to help him dispute his debts, but at this juncture there are not clear indications his financial problems are under control. I find AG ¶ 20(c) partially applies.

Applicant experienced two periods of unemployment. It appears he was also underemployment, but he did not provide specifics about his finances. His unemployment and underemployment were beyond his control. To fully apply AG ¶ 20(b), Applicant must have acted responsibly. Applicant did not provide evidence of his actions to resolve his debts since he became fully employed. He has been employed in his current job since February 2013 but there is no indication he took any action on any of his debts until after he received the SOR and then only to dispute them. Applicant did

not provide evidence as to how he acted responsibly under the situation. AG ¶ 20(b) partially applies.

Guideline E, Personal Conduct

AG ¶ 15 sets out the trustworthiness concern relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have considered the disqualifying conditions under personal conduct AG ¶ 16 and the following is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not safeguard protected information.

Applicant answered "no" to the SCA question that asked if he was currently over 120 days delinquent on any financial account. During his background interview he indicated to the investigator that he did not disclose he had any financial issues in his case papers, but he knew he did. He was unable to recall all of his delinquencies, so he did not list any of them, but knew he had them. In response to the FORM, Applicant stated he did not disclose his delinquent debts on his SCA because he did not take the time to accurately review his financial status at that time. I find Applicant was aware he had to disclose his delinquent debts and deliberately failed to disclose truthful information on his SCA. AG ¶ 16(a) applies. Applicant was aware of his duty to appear in court in May 2009, to resolve a returned to check. He intentionally failed to do so because he did not have the money to pay for the check. AG ¶ 16(c) applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and the following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not make a prompt good-faith disclosure before being confronted with the falsification by the government investigator. He only disclosed the information after the investigator asked him if he had delinquent accounts. I find none of the above mitigating conditions apply to this allegation.

Applicant failed to appear in court as was ordered to resolve a returned check. He eventually went to court and paid the amount owed, and the case was dismissed. The offense was minor, and it has been six years since this conduct occurred. There is no evidence that similar conduct has occurred. I find AG ¶ 17(c) applies.

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. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 47 years old. He served honorably in the military. He deliberately failed to disclose on his SCA that he had delinquent debts. He admitted all of the debts. He began working with a credit agency after he received the SOR and is now disputing his debts. He has not provided any evidence that he has paid or resolved any of the delinquent debts or the current status of his student loans. Applicant has been working for his present employer since February 2013. His financial problems remain an issue. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate financial considerations and the personal conduct 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.p: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Subparagraph 2.b: | For Applicant |

Conclusion

In light of all of the circumstances it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge