



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



In the matter of:)	
)	
)	ADP ¹ Case No. 14-01822
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

08/25/2015

Decision

WHITE, David M., Administrative Judge:

Applicant admitted owing 12 delinquent debts totaling \$10,399 and provided no evidence of efforts to resolve them or to become financially responsible in the future. He did not mitigate resulting trustworthiness concerns. Eligibility for a public trust position is denied.

On November 18, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On July 1, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under DoD

¹ The SOR and FORM mistakenly identified this as an ISCR security clearance case in various locations throughout the documents. However, the SOR properly notified Applicant that the DoD CAF reviewed his eligibility to occupy a designated ADP I/II/III position, and was submitting the case to an administrative judge to make such a determination. DOHA Hearing Office administrative personnel have since confirmed that Applicant is applying for a trustworthiness determination rather than a security clearance. The adjudicative criteria are the same for ISCR and ADP eligibility determinations. Accordingly the SOR heading error, and Department Counsel's statements in the FORM concerning Applicant's eligibility for a security clearance or access to classified information, instead of an ADP I/II/III public trust position, are harmless errors.

Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DoD 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On July 25, 2014, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. (Item 2.) On February 23, 2015, Department Counsel prepared a File of Relevant Material (FORM), containing six Items.² The Defense Office of Hearings and Appeals (DOHA) mailed Applicant a complete copy of the FORM on March 4, 2015. Applicant received the FORM on March 17, 2015, and was provided 30 days from its receipt to file objections and submit additional information. He timely submitted an additional statement in which he accepted responsibility for the SOR-listed debts, expressed his understanding of the resulting security concerns, but objected to denial of his clearance on that basis for various reasons. He made no objection to consideration of any contents of the FORM; and did not request additional time to respond. Department Counsel had no objection to the admissibility of this response to the FORM, which I marked Applicant Exhibit (AE) A, and admitted into the record. On June 18, 2015, DOHA assigned the case to me.

Findings of Fact

The SOR alleges 12 delinquent debts totaling \$10,399. In his responses to the SOR and FORM, Applicant admitted the truth of these allegations and accepted responsibility for the debts described therein. (Item 2; AE A.) Applicant's admissions are incorporated in the following findings.

Applicant is 31 years old. He was married in March 2005 and divorced in May 2006. He has a three-year-old son, whose mother sued him to establish paternity and obtain a child support order in May 2012. He graduated from high school in 2002, and was honorably discharged from a six-year enlistment in the Air Force in May 2009. He quit his subsequent job as a broadband technician to attend some college classes between January 2010 and December 2011, without completing a degree. Since then he has held full-time employment, except for a few weeks when he quit another job to pursue his current employment in September 2013. (Item 4; Item 5.)

Applicant's financial delinquencies consist of medical bills, a student loan, a credit card account, and utility debts. They arose over the past four years, and he offered no evidence of any payment toward, or other effort to resolve, any of them. (Item 2; Item 5; AE A.)

² **Error! Main Document Only.**Item 6 is inadmissible and will not be considered or cited as evidence. It is an unsworn summary of an interview of Applicant that was conducted by the Office of Personnel Management on December 17, 2013. This summary was not certified by him to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of adoption by Applicant or evidence from an authenticating witness. Applicant's admissions in Item 2, and full data credit report in Item 5, also make the contents of Item 6 cumulative.

Applicant's seven delinquent medical bills (SOR ¶¶ 1.a, 1.c, 1.f, 1.g, 1.j, 1.k, 1.l) total \$8,269 and were placed for collection at different times between February 2011 and November 2013. They range from \$150 to \$3,420. Applicant said that each one resulted from an unexpected medical emergency during a time when he had either no or inadequate medical coverage, but provided no elaboration of the circumstances under which any of the debts were incurred. (Item 2; Item 5; AE A.)

In November 2013 Applicant was reported to be more than 120 days past due, in the amount of \$331, on his delinquent \$4,200 student loan. The balance due had grown to \$4,799 at the time of that credit report. Only the \$331 delinquent amount alleged in SOR ¶ 1.e was included in the \$10,399 total discussed above. No payments toward this loan were substantiated, so his total delinquent debt would have exceeded \$15,000 by the close of the record. (Item 2; Item 5; AE A.)

Applicant's delinquent credit card and utility debts totaled \$1,799 at the time of his November 2013 credit report. They were placed for collection or charged off between March 2011 and September 2013. (Item 5.) His explanation for these (and his other) delinquent debts was, "Between the cost of living, child support, and other needs of my child the amount of extra income I have makes it difficult to pay debts right away." (Item 2.) He further submitted, "The fact is my cost of living expenses increased to a point where trying to pay off excess debt just wasn't a possibility in the last few years." (AE A.)

Applicant reported in his November 2013 e-QIP that he was approximately \$3,000 delinquent on his court-ordered child support payments due to the "Rough economy." (Item 3 at 35.) He was unable to provide an address for his child, whose mother has custody, on that document although he did so for his sister and half-brothers. (Item 3 at 26-27.) He provided no financial statement or budget information showing his income or living expenses, so his claim to have prioritized spending for his child's needs over resolving the debts alleged in the SOR is not persuasive.

Since the record contains no information concerning Applicant's current income and regular expenses, his ability to avoid incurring additional delinquent debt cannot be evaluated. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses described his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 AGs. 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 AG ¶ 2(a), describing 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.” 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision.”

A person who applies for access to sensitive information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Applicant accumulated substantial delinquent debt over the past four years since leaving active duty in the Air Force. This evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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 substantially more than \$10,000 in delinquent debts that continue at present without any apparent means of resolution. He did not show that these debts arose from conditions beyond his control or that he acted responsibly under the circumstances, particularly concerning the medical bills. He documented no counseling to assist with debt resolution, nor did he demonstrate an ability to avoid recurrence of financial problems. According to the record evidence, all of the SOR-alleged debts remain unresolved and no documented basis to dispute the legitimacy of any of them was provided. Applicant therefor failed to establish mitigation of trustworthiness concerns under AG ¶¶ 20(a) through 20(e).

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a mature individual who is accountable for the decisions and choices that led to his financial difficulties. He has essentially ignored his voluntarily-incurred delinquent debts, and provided no evidence of efforts to resolve them despite his awareness of the resulting trustworthiness concerns. He failed to demonstrate good judgment or permanent behavioral change. His ongoing delinquent debts establish continuing potential for pressure, coercion, or duress, and make continuation of financial problems likely.

