



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



In the matter of:)
)
) ADP Case No. 14-02206¹
)
Applicant for Public Trust Position)

Appearances

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

07/31/2015

Decision

DAM, Shari, Administrative Judge:

Applicant owes over \$83,000 for two delinquent debts, the largest being a \$75,000 unpaid mortgage that went into collections in 2009. Although he presented some evidence that he resolved five other debts, he failed to present sufficient evidence to mitigate the outstanding financial trustworthiness concerns. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to ADP I/II/III sensitive information is denied.

Statement of the Case

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I), entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Sensitive Information Systems Positions (ADP I/II/III), as defined in Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation).

On September 9, 2013, Applicant submitted a Public Trust Position Application (SF 85P). On November 10, 2014, the Department of Defense Consolidated

¹ The Statement of Reasons incorrectly labeled this as an ISCR case.

Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); the Regulation (*supra*); and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 22, 2014 (Answer), and requested a hearing before an administrative judge. DOHA assigned the case to me on April 9, 2015, and issued a Notice of Hearing on April 24, 2015. I convened the hearing as scheduled on May 20, 2015. Department Counsel offered Government Exhibits (GE) 1 through 2, which were admitted without objection. Applicant testified and offered Applicant's Exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 29, 2015. The record remained open until June 15, 2015, to give Applicant an opportunity to submit other exhibits. He timely submitted AE D, which I admitted without an objection from Department Counsel.

Findings of Fact

Applicant admitted all allegations contained in SOR in an email dated January 28, 2015. (Answer.) Because he did not admit nor deny the individual allegations contained in SOR ¶¶ 1.a through 1.g, Department Counsel requested that he file an oral answer to each allegation, which he did. He admitted the delinquent debts alleged in SOR ¶¶ 1.b and 1.e. He denied the delinquent debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.g, and offered explanations. (Tr. 6-8.) His admissions are incorporated into the findings of fact herein.

Applicant is 41 years old and divorced since 2008. He started working for his current employer, a defense contractor, in September 2013. He consulted with the company for six months prior to being hired. (Tr. 13.) Before starting the consulting position he was unemployed for a total of about six months or longer. He previously worked for a mortgage company for 13 years. (Tr. 14-18.)

Applicant attributed the alleged delinquent debts to his divorce in 2008 and subsequent periods of unemployment. While going through the divorce he learned that his wife had accumulated a significant amount of credit card debt. Because her credit was poor, he obtained a second mortgage on a home he purchased in 2006. (Tr. 16-17.) After the divorce, he was unable to manage all of his expenses without his former wife's salary. (Tr. 33.) He also owed federal taxes for tax years 2011 and 2012.² In 2013 he resolved those taxes. (Tr. 21, 26.)

² The SOR alleged unpaid federal taxes for 2011 as a trustworthiness concern, but not for unpaid federal taxes for 2012, the amount of which is unclear. That fact will not be analyzed as a potential disqualifying condition, but will be considered under the analysis of mitigating conditions and the whole-person concept.

Based on credit bureau reports from September 2013 and September 2014, the SOR alleged seven delinquent debts totaling \$105,529, which accumulated between 2007 and 2013. The status of each debt is as follows:

Four SOR debts are paid: ¶ 1.a for \$282 (GE 2 at 21.); ¶ 1.b for \$110 (AE D at 1.); and ¶ 1.c for \$612 (AE D at 2.). Applicant's delinquent taxes of \$1,826 for tax year 2011, alleged in SOR ¶ 1.g, are paid, as are federal taxes for 2012. (AE D at 7, 8, 9.)

The debt alleged in SOR ¶ 1.d for \$75,593 is a second mortgage that Applicant assumed on a residence he purchased in May 2006 while married to his former wife. The bank subsequently foreclosed on the house, and the bank charged off the second mortgage in July 2009. Applicant said the debt was no longer on his credit report. (Tr. 34-36; GE 4 at 8; AE D at 6.) When interviewed about this debt in October 2013, Applicant acknowledged that his former residence went into foreclosure, and this loan became a collection account. He said that he intended to address it in the future. (GE 2 at 7.) This debt remains unresolved.

The debt alleged in SOR ¶ 1.e for \$6,429 is an unpaid credit card. Applicant said this was his former wife's debt and is scheduled to "fall off my credit this September." (Tr. 39.) He said he never used the card and does not have the money to pay it. He stated that the debt was charged off and not resolved through his former wife's bankruptcy. (Tr. 39-41.) During the October 2013 interview, Applicant indicated that he would pay some or all of the debt. (GE 2 at 8.) Applicant filed a dispute with a credit bureau in August 2014; however, the debt remains unresolved. (GE 3 at 3.)

The debt alleged in SOR ¶ 1.f for \$20,677 is his former wife's responsibility. Applicant presented the divorce decree confirming his assertion. (Tr. 44; GE 2 at 33.) It is resolved.³

Applicant's annual salary is \$80,000. His net monthly income is \$3,588 and expenses are \$3,308, leaving him about \$280 remaining. (AE D at 11.) He has not participated in credit or budget counseling. (Tr. 15.)

Applicant submitted his most recent performance evaluation, dated February 2015. His supervisor gave him an overall rating of "Meets Expectations." (AE D at 17.) Applicant also provided certificates, documenting achievements at work. (AE D at 17, 18, 19.)

Policies

Positions designated as ADP I, II, and III 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, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to

³Although this debt is being considered resolved for purposes of this Decision, Applicant may still be responsible to the creditors for payment, as it is an unpaid joint marital debt. Applicant's legal recourse would then require him to sue his former wife for the monies.

sensitive duties is clearly consistent with the interests of national security.” (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. (Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, 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, which are to be used in evaluating an applicant’s eligibility for access to sensitive information.

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 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Directive ¶ E3.1.15 states that, “[t]he 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 clearance decision.”

A person applying 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 protected 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 classified 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 has more than \$82,000 in unresolved debt that he incurred within the past seven or eight years. The evidence raises both of the above trustworthiness concerns, 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's largest delinquent debt, an unpaid second mortgage, was charged off in 2009, and remains unresolved. The other delinquent debt, a credit card, became delinquent prior to his 2008 divorce. There is no substantive evidence indicating that Applicant intends to address either debt, calling into question his reliability. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose as a result of periods of unemployment and as a consequence of a divorce. While those circumstances may have been beyond his control, he did not provide evidence that he acted responsibly under the circumstances, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has little application to any debts.

Applicant did not provide evidence that he participated in credit or financial counseling. Given the large amount of the combined two delinquent debts, AG ¶ 20(c) has no application because there are not clear indications that his financial problems are under control. Applicant submitted proof that he made a good-faith effort to pay four debts and resolved another debt. Thus, AG ¶ 20(d) applies to the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.f, and 1.g. There is no evidence that Applicant successfully disputed any debts. AG ¶ 20(e) does not apply.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Some mitigating evidence

weighs in favor of granting Applicant a public trust position. He is an intelligent, articulate, and candid person, who has successfully worked for a defense contractor for more than two years. Since obtaining that position he has resolved four debts totaling \$21,680, including delinquent federal taxes for 2011 and 2012. However, the largest debt for \$75,593 remains unresolved since 2009 when it was charged off, in addition to a credit card debt for \$6,429 that was opened while he was married and subsequently became delinquent. During an interview in October 2013, he said he intended to resolve both debts. Neither has been addressed, in particular the second mortgage, which he obtained to help purchase a home in 2006. Both of these debts remain his responsibility, regardless of whether they are reported on his credit report.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, Applicant has not sufficiently mitigated the trustworthiness concerns pertaining to financial considerations. Overall, the record evidence leaves doubt as to Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising under Guideline F.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to ADP I/II/III sensitive information is denied.

Shari Dam
Administrative Judge