



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



In the matter of:)
)
-----) ADP Case No. 15-01951
)
Applicant for Public Trust Position)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny him eligibility for a public trust position. He experienced some financial problems due to a divorce in 2007. He presented sufficient evidence to explain and mitigate the concern stemming from his financial difficulties. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on September 13, 2012.¹ About three years later on September 29, 2015, after reviewing the application and information gathered during a background investigation, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing a trustworthiness concern under Guideline F for financial

¹ Exhibit 3.

considerations.² The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)³ implemented by the DOD on September 1, 2006.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record. On January 4, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁴ The file of relevant material (FORM) was mailed to Applicant, who received it on January 12, 2016, and replied within the 30-day period from receipt. His reply consists of the following items: (1) a one-page letter of explanation; (2) a two-page response to a reinvestigation conducted by Equifax, dated February 1, 2016; and (3) the 2007 divorce decree between Applicant and his then wife. Those matters are made part of the written record as Exhibits A, B, and C. The case was assigned to me on April 27, 2016.

Findings of Fact

Applicant is a 41-year-old voice and data network consultant for a health-care contractor to the Defense Department. His educational background includes a bachelor's degree awarded in 2004. His first marriage produced four children and ended in divorce in 2007. He remarried in 2008. He is seeking to obtain eligibility to occupy a position of public trust for his current job responsibilities. Eligibility is necessary because his job involves access to sensitive but unclassified information.

The SOR allegations are limited to three items: (1) a 2002 Chapter 7 bankruptcy case; (2) a past-due mortgage loan in foreclosure status; and (3) an unpaid \$12,983 judgment filed in December 2009. The SOR allegations are established by Applicant's admissions and explanations as well as credit reports from September 2015 and February 2015.⁵

Little is known about the 2002 Chapter 7 bankruptcy case. Applicant disclosed the bankruptcy in Section 26 of his application, explaining that about \$40,000 in

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁵ Answer to SOR; Exhibits 4 and 5, respectively. Department Counsel's brief incorrectly dates Exhibit 5 as February 2012, but the document is in fact dated February 2015. There is no credit report from 2012 in the FORM.

indebtedness was discharged. He admitted the SOR allegation, but offered no details about the bankruptcy in his answer to the SOR or response to the FORM.

The past-due mortgage loan in foreclosure status stems from Applicant's 2007 divorce. The account is listed in the February 2015 credit report as past due in the amount of \$11,253, with a balance of \$0, a payment amount of \$1,250, a high credit amount of \$179,700, and noted that the foreclosure process had started.⁶ The mortgage loan is not mentioned in the more recent September 2015 credit report.⁷ He took responsibility for the mortgage loan as stated in the divorce decree.⁸ He explained that he was unable to afford the mortgage loan and meet his obligation to pay approximately \$850 per month in child support.⁹ He defaulted on the mortgage loan, and the house was sold during the foreclosure process. There is no documentary evidence of a deficiency balance.

The \$11,253 unpaid judgment is related to the 2007 divorce. The debt was incurred by Applicant's then spouse for elective cosmetic surgery, and Applicant cosigned for the financing. She took responsibility for the debt as stated in the divorce decree.¹⁰ Applicant explained that his former spouse then defaulted on the debt and had it discharged in a bankruptcy case.¹¹ He further explained his wages were subject to garnishment for a period. He presented documentary evidence that the judgment was satisfied or released or both.¹² Other than the three items discussed above, the two 2015 credit reports reflect no past-due or other delinquent accounts.¹³

⁶ Exhibit 5 at 1.

⁷ Exhibit 4.

⁸ Exhibit C at 12.

⁹ Answer to SOR; Exhibit A.

¹⁰ Exhibit C at 10.

¹¹ Exhibits 3 and A; Answer to SOR.

¹² Exhibit B.

¹³ Exhibits 4 and 5.

Discussion

Under Guideline F for financial considerations,¹⁴ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.¹⁵ The overall concern is:

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.¹⁶

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Based on the bankruptcy, unpaid judgment, and defaulted mortgage loan ending in foreclosure, the evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F.¹⁷ I have also considered six mitigating conditions under Guideline F,¹⁸ and the following are most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances; and

AG ¶ 20(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.

¹⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹⁵ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

¹⁶ AG ¶ 18.

¹⁷ AG ¶ 19(a) and (c).

¹⁸ AG ¶ 20(a)–(f).

I am persuaded that Applicant experienced some financial problems due to a divorce in 2007, which was a circumstance largely beyond his control. In addition, the 2002 Chapter 7 bankruptcy case occurred during his first marriage, and it is likely that the marriage was a factor. The financial problems he experienced during his first marriage are in the past. There is no indication of financial problems in his current marriage. He presented documentary evidence that the unpaid judgment was satisfied or released or both. There is no documentary evidence of a deficiency balance stemming from the foreclosure.¹⁹ His current overall financial situation appears to be stable.

To conclude, the record evidence leaves me with no doubt or concern about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.²⁰ For all these reasons, I conclude Applicant presented sufficient information to explain and mitigate the concern stemming from his financial difficulties.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a–1.c:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard
Administrative Judge

¹⁹ A deficiency balance is unlikely because Applicant's home was located in 1 of 12 states that is a nonrecourse state, which means that the mortgage lender cannot do anything other than foreclose on the property, even if the sale proceeds do not repay the total debt owed on the loan.

²⁰ AG ¶ 2(a)(1)–(9).