



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 15-02400
)
)
Applicant for Public Trust Position)

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

June 21, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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 Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP)¹, on August 11, 2014. On October 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6,

¹The file did not contain an SF 85P, although this is a trustworthiness determination.

Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on November 10, 2015, and requested a Decision without a hearing by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on January 6, 2016, containing six Items.² Applicant did not respond to the FORM. I received the case assignment on April 26, 2016. Based upon a review of the pleadings, and exhibits, eligibility for access to sensitive information is denied.

Findings of Fact

Applicant is 43 years old, and has worked for his employer, a defense contractor, since 1997. He is divorced and has one child. (Item 2.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR alleged that Applicant is delinquent on five debts in the total approximate amount of \$23,512. Additionally, Applicant was alleged to have falsified his e-QIP signed August 11, 2014, when he failed to disclose his delinquent debts on that form. Applicant admitted the debts identified in SOR ¶¶ 1.a through 1.d, and the allegation involving falsification in SOR ¶ 2.a. He denied the debt identified in SOR ¶ 1.e.

Applicant's debts consist of an unpaid judgment filed against him in 2012 in the amount of \$21,093 (SOR ¶ 1.a); a telecommunications bill in the amount of \$76 that has been past due since November 2013 (SOR ¶ 1.b); a medical debt delinquent since 2012 in the amount of \$55 (SOR ¶ 1.c); a collection account delinquent since 2012 in the amount of \$2,163 (SOR ¶ 1.d); and a delinquent DVD subscription account in the amount of \$125 (SOR ¶ 1.e). Applicant's delinquent accounts appeared on his credit reports dated September 22, 2015, and September 11, 2014. (Item 4; Item 5.)

Applicant failed to provide documentation to show he has taken any action on his delinquent accounts. While he indicated that he did not recognize the account identified in SOR ¶ 1.e, he did not provide documentation to show he had contested that debt or of other action to resolve it. All of the alleged delinquent accounts remain unresolved. (Item 2; Item 4; Item 5.)

² Item 6 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in October 2014. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

Applicant submitted no evidence that he has received any financial counseling. He did not submit a budget, or any other information concerning his income and expenses.

Personal Conduct security concerns arose out of Applicant's failure to disclose the judgment and collection accounts. Section 26 of the e-QIP asked a series of financial questions including: "Delinquency Involving Enforcement. In the past seven (7) years, have . . . you had a judgment entered against you?; . . . you had any bills or debts turned over to a collection agency?; . . .you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" Applicant answered these questions, "No." He failed to disclose his delinquent debts as identified in SOR ¶¶ 1.a through 1.e. (Item 3.)

Applicant provided 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. 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 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 human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.))

Analysis

Guideline F, Financial Considerations

The security concerns under 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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant has a history of delinquent debt. He has had unresolved delinquencies since 2012. His ongoing pattern of delinquent debt, and history of inability or

unwillingness to pay his lawful debts, raises security concerns under DCs 19(a) and (c), and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security 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 failed to produce sufficient evidence that he has addressed any of his delinquencies. He offered little evidence from which to establish a track record of debt resolution. The evidence fails to establish any conditions beyond his control that contributed to his delinquent accounts. He did not produce evidence that he received financial counseling. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant failed to provide such evidence. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition 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.

Applicant failed to identify his SOR-listed debts, and judgment on his e-QIP, instead denying their existence with his "No" response to the questions in Section 26. He offered no explanation for his omissions. He clearly knew of the judgment and delinquent accounts. On balance, the evidence indicates that he willfully chose not to disclose his delinquent debts on the e-QIP. This behavior demonstrates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. 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 refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) 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.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct his falsification and concealment. He provided no information that indicates he was ill-advised in completing his e-QIP. Falsifying material information raises serious concerns and Applicant has done nothing to show that similar dishonesty is unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided sufficient evidence to meet his burden of proof for his personal conduct.

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 the 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) 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 all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from his financial considerations and personal conduct.

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~1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a	Against 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 for a public trust position. Eligibility for access to sensitive information is denied.

Jennifer I. Goldstein
Administrative Judge