



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



In the matter of:)
)
) ADP Case No. 08-03446
)
)
Applicant for Public Trust Position)

Appearances

For Government: James F. Duffy, Department Counsel
For Applicant: *Pro Se*

March 10, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 13 past due accounts totaling approximately \$24,000. None of the debts have been paid nor is there an arrangement to pay these debts. Applicant failed to mitigate the financial considerations and personal conduct security concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 22, 2007, Applicant submitted his Questionnaire for Public Trust Position (SF 85P). On August 26, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations, based on a history of financial problems as evidenced by delinquent debts, and Guideline E, personal conduct, for falsified material on his SF 85P. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense (DoD)

Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On September 19, 2008, Applicant's answer to the SOR was received. In his answer, Applicant elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated December 29, 2008. The FORM contained 10 attachments. On January 6, 2009, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on February 5, 2009. As of February 26, 2009, no response had been received. On March 3, 2009, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant denied a \$2,431 telephone company debt (¶ 1.b), the \$767 debt (¶ 1.g), and the falsification listed in ¶ 2.a. He admitted the remaining allegations.

Applicant is a 21-year-old employee seeking to occupy a Public Trust Position in support of a contract with the Department of Defense. Neither Applicant's duty position nor the nature of the contract are known from the record as submitted. Applicant is seeking to obtain accesses to sensitive information.

Applicant owes 13 debts which total \$23,911. There is no evidence of any payment on these debts. The majority of these accounts were opened in July and August 2006 when Applicant was working for a motel/hotel chain. In August 2006, Applicant returned to school and also obtained a job as an office assistant. (Item 5)

The debts in ¶ 1.a, (\$357) and ¶ 1.b, (\$2,431) are two telephone accounts opened in July 2006, which have been charged off. Applicant admits owing the first debt, but not the second. In June 2008, in his response to written interrogatories (Item 6), Applicant stated he had to look into the second debt because he was only aware of the first debt. Both debts appear on Applicant's June 2007, February 2008, and August 2008 credit bureau reports (CBR). (Items 7, 8, 9) In June 2008, when Applicant responded to the written interrogatories (Item 6) he stated, with regard to the smaller phone bill, he "should be able to resolve this debt within the next few months."

The debt in ¶ 1.c (\$887) was a credit card debt opened in June 2006. The CBR indicates the first payment on this debt was never received. (Item 9) The debt in ¶ 1.d (\$321) was a chain store debt opened in July 2006. In response to the interrogatories, Applicant stated he had received a payoff agreement with the creditor and intended to

pay the debt in full. The debt in ¶ 1.e (\$410) was a credit card debt opened in August 2006.

The debt in ¶ 1.f (\$9,757) was a credit union account opened in July 2006 for an automobile. High credit was \$12,840 with a 63 month repayment plan. The debt in ¶ 1.g (\$767) was an account opened in August 2006 with terms of repayment of \$37 per month. Applicant denies this debt because he does not recognize it. The debt in ¶ 1.h (\$754) was a credit card account. In response to the interrogatories, Applicant stated he planned to pay this debt.

The debt in ¶ 1.i (\$717) was a bank debt which Applicant stated in June 2008 he planned to pay by the end of the year. (Item 6) This is the only debt which does not appear in his CBRs. All the other debts listed in the SOR appear in all three of his CBRs.

The debt in ¶ 1.j (\$1,750) was a student loan taken out in August 2006. High credit was \$3,500. As of the date of Applicant's June 2007 CBR, this debt was being "paid as agreed." (Item 9) The final two debts ¶ 1.k (\$2,821) and ¶ 1.l (\$2,939) were student loans taken out in October 2005. Repayment on the loans were \$30 and \$31 per month. (Item 9) In June 2008, when Applicant responded to the interrogatories, he stated he had received payment information three weeks prior and intended to start making payment on these loans.

In June 2007, Applicant executed a SF 85P, which him asked in question 22.b if he was currently more than 180 days delinquent on any loan or financial obligation. He answered "no" to the question. He did not explain why he answered no when he had the previously listed delinquent debts.

Applicant's gross income is \$1,608 per month and his take home pay is \$1,296. His rent is only \$125 per month, his car expenses are \$646, and his other expenses total \$320. His monthly expenses total \$1,091, which leaves \$205 each month for all other expenses. Applicant has \$652 of monthly debt repayment including insurance, phone service, and car payment. (Item 6) Applicant monthly disposable income (gross income less deductions, expenses, and debt payment) is a negative \$447. This amount does not include any amounts for student loan repayment or repayment on any of the other debts listed in the SOR.

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 common sense 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes 13 debts which have been charged off, the accounts closed, or are delinquent, which total approximately \$24,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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.

None of the mitigating factors apply. The behavior did not happen long ago. The accounts were opened in 2005 and 2006 and remain unpaid. There are 13 debts, so the behavior is not infrequent. There is no evidence the obligations were incurred under unusual circumstances. The debts appear to be credit card debt, student loans, a car purchase, telephone bills, and other bank accounts. AG ¶ 20(a) does not apply.

There is no evidence of divorce, separation, periods of unemployment, or unexpected medical expenses, or other evidence that Applicant's financial problems were beyond his control. AG ¶ 20(b) does not apply. AG ¶ 20(c) and ¶ 20(d) do not apply. There is no evidence Applicant has received financial counseling or that his financial problems are being resolved or are under control. Applicant's monthly expenses exceed his monthly income by more than \$400. There is no evidence of a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has denied two of the debts, but provided no documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue. AG ¶ 20(e) does not apply.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph 15 of the Adjudicative Guidelines (AG) states a concern where there is 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 eligibility for access to sensitive information process or any other failure to cooperate with the eligibility for access to sensitive information process."

Under AG ¶ 16 (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 eligibility for access to sensitive information eligibility or trustworthiness, or award fiduciary responsibilities" and ¶ 16 (b) "deliberately providing false or misleading information concerning relevant facts to an employer, investigator,

security official, competent medical authority, or other official government representative” are security concerns.

Applicant failed to list his delinquent debts on his SF 85P. In June 2008, in the written interrogatories Applicant acknowledged all but two of the debts. He denies falsifying his SF 85P, but the clear and plain language of the question asked if he was currently more than 180 days delinquent on any debt. He was delinquent and failed to so indicate. He has provided no explanation as to his incorrect answer.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the 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 security clearance 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. Applicant is a young man, only 21 years old. He has made some mistakes in the past by becoming overextended financially and unable to repay his obligations in a timely manner. Even now, his monthly expenses exceed his income by \$400 or more per month. In June 2008, when he answered the interrogatories, Applicant was made aware of the government’s concerns about his unpaid obligations. Eight months later, there is no evidence Applicant has made a payment on any of his debts. Additionally, he failed to explain why he did not list his delinquent debts when asked about them on his SF 85P.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated the security concerns arising from his financial considerations and personal conduct.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a – 1.I: Against Applicant

Paragraph 2, Personal Conduct: 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 national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

CLAUDE R. HEINY II
Administrative Judge