



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



In the matter of:)
)
) ADP Case No. 08-05980
)
)
Applicant for Public Trust Position)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is granted.

On October 24, 2007, Applicant submitted a Public Trust Position Application (SF-85P). On November 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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), 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 December 13, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On February 12, 2009,

Department Counsel prepared a File of Relevant Material (FORM), containing ten Items, and mailed Applicant a complete copy. Applicant received the FORM on February 26, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant timely submitted a letter along with five attachments, to which Department Counsel had no objections. I marked the submission as Applicant Exhibit (AE) 1 (with 11 pages), and admitted it into the record. On April 8, 2009, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in Paragraph 1 of the SOR and provided additional information in support of his request for a trustworthiness determination.

Applicant is 32-years old and single. Since October 2007, he has worked as an administrative assistant for a health service network. He is currently working on a Master of Arts in Business Administration in order to secure a higher paying position. (Item 6 at 15) Other than information regarding his delinquent accounts, there is no other derogatory information about Applicant in the case file.

Based on an October 2007 credit bureau report (CBR), the November 2008 SOR alleged that Applicant owed approximately \$28,923 to three credit card companies for debts that began accruing in 2001. (GE 5) Applicant has resolved and paid all three debts. In December 2008, he negotiated a settlement of the \$6,263 delinquent debt, alleged in SOR ¶ 1.a, for \$658.95. He made three monthly payments of \$219.65, beginning on December 10, 2008. (AE 1 at 2-6) In December 2008, he negotiated a \$2,820.08 settlement of the \$14,100.42 debt alleged in SOR ¶ 1.b. He made two payments of \$1,415.04 on December 10, 2008 and January 10, 2009. (GE 3 at 4, 5; AE 1 at 8, 9) On December 10, 2008, he resolved the \$8,762 debt alleged in SOR ¶ 1.c with a payment of \$2,200. (GE 3 at 3, 8, 9; AE 1 at 10)

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 revised adjudicative guidelines (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."

Directive ¶ E3.1.14 requires the Government to 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." Section 7 of Executive Order 10865 provides that decisions adverse to an applicant shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise trustworthiness concerns, two of which may be pertinent to this case. Under AG ¶ 19(a) “an inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c) “a history of not meeting financial obligations” may raise trustworthiness concerns. Based on a CBR and his admissions, Applicant was unable or unwilling to satisfy three debts that began accumulating in 2001. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting trustworthiness concerns. AG ¶ 20 provides five conditions that could mitigate such concerns arising from financial considerations:

(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 financial difficulties started in 2001 and continued into 2008. Because the problems have been ongoing for at least seven years and are not isolated incidents, AG ¶ 20(a) does not apply. Applicant did not provide any explanation addressing the underlying reasons for his financial difficulties; hence AG ¶ 20(b) cannot apply. He did not submit any documentation that he received credit counseling, but did submit proof that he made a good-faith effort to pay all of his delinquent debts, establishing that the problem is resolved and warranting the application of AG ¶ 20(c) and AG ¶ 20(d). There is no record evidence to support the application of AG ¶ 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 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.

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 all the facts and circumstances surrounding this case. Applicant is 32 years old. He started working for a federal contractor in October 2007. Currently, he is pursuing an advanced degree in order to obtain a higher paying position. According to the record, his delinquent debts began accumulating in 2001. At the time the SOR was filed in November 2008, he owed approximately \$28,923 to three creditors. Immediately after receiving the SOR, he resolved and paid his debts by the middle of February 2009, demonstrating responsible conduct and concern for his position. Other than these debts, there is no other derogatory evidence in the record that raises a trustworthiness concern.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a public trust position at this time. For all these reasons, I conclude that Applicant mitigated the trustworthiness concerns arising from his financial issues.

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: | FOR APPLICANT |
| Subparagraph 1.a through 1.c: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

SHARI DAM
Administrative Judge