



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



In the matter of:)	
)	
-----)	ADP Case No. 08-06452
SSN: -----)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: Patricia Hogue, Personal Representative

July 17, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF-85P), dated March 5, 2008. On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns regarding Applicant arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 January, 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 March 13, 2009, Applicant answered the SOR. He admitted the factual allegations under the financial guideline. He requested a hearing before an Administrative Judge. DOHA received the request and assigned me to the case on June 2, 2009. Applicant and Department Counsel agreed to a July 7, 2009, hearing date. On June 11, 2009, a Notice of Hearing was issued scheduling the hearing for that

date. The hearing was convened as scheduled. Department Counsel submitted four exhibits (GE) 1-4, without objection. Applicant introduced four exhibits (AE) A-D, without objection. He testified on his own behalf and presented the testimony of two witnesses. The transcript (Tr.) was received on July 15, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for a public trust position is granted.

Findings of Fact

Applicant is a 42-year-old working for a defense contractor. He graduated from high school in 1984 and entered the workforce. He is single and has no children. He has worked for his current employer since November 2007 (Tr. 24).

Prior to his current employment, Applicant worked at a variety of jobs, often earning low hourly rates of pay. He was unemployed for a few months in 2004. He also had a job in 2005-2007 that was seasonal (Tr. 41). He estimates that he earned approximately \$12,000 to \$14,000 a year. His current salary is \$25,000 (Tr. 25).

At issue are the following debts totaling approximately \$19,856, as noted in the March 2, 2009 SOR as allegations ¶¶ 1.a through 1.d.

1.a – **Bank Debt** (\$3,191) – PAID – Applicant admits this account represents a credit card account opened in 1997. In 2003 or 2004, he could not make payments on the account due to high interest rates and his net income (Tr. 31). He settled this account for \$1,800 in April 2009 (AE B).

1.b – **Financial Loan** (\$9,269) – PAID – Applicant settled this account for \$2,317 in June 2009 (AE C). He did not make any payments on this account after 2004 due to unemployment (Tr. 32).

1.c – **Financial Loan** (\$6,775) – PAID – Applicant admits this allegation. This is a duplicate account that was listed on his credit report (AE C). He settled this account as referenced in SOR allegation ¶ 1.b above.

1.d – **Cable Debt** (\$621) – PAID – Applicant settled this account but originally disputed it because he alerted the company to change the account name to his former roommate.

Applicant obtained the services of a consumer credit counseling service in 2009. He completed two financial courses in June 2009 (AE D). Prior to that he researched various debt management companies and determined that it was not in his best interests to use such a company. He decided to save money in 2008 and pay his debts in 2009. He prepared a budget. He is keeping receipts for his purchases. He does not use a credit card (Tr. 27). He just recently made his last car payment for his 1997 vehicle (Tr. 22). He estimates a net monthly remainder of \$250. He also has a savings account. He is current on his monthly expenses (Tr. 40).

Applicant acknowledged that he has responsibility for his delinquent debts. He states that he did not pay sufficient attention to the accounts. He used credit cards to pay for groceries but also some frivolous things (Tr. 43). He tried to transfer his debt to a credit card with a lower interest rate but he still could not handle the monthly amounts (Tr. 43). He now realizes the importance of his credit standing.

Applicant's manager testified at the hearing that he is a dedicated, hardworking individual. He is a team lead at the help desk (Tr. 47). She describes his prior experience in working with the public and with personal information. He is responsible in the community and assists with a charity run. He collects money for the run and has proven to be trustworthy. She recommends him for a public trust position.

Applicant's former roommate testified at the hearing and confirmed Applicant's problem with the cable account. He described Applicant as a "true friend" who is honest and dependable. He has known Applicant for many years. He stated that Applicant has helped him financially in the past (Tr. 53).

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 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 [sensitive] 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. Under AG & 19(a), an inability or unwillingness to satisfy debts[@] is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations[@] may raise security concerns. Applicant accumulated delinquent debt, mostly in 2004. He acknowledged the accounts represented old debt. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where Athe 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. Most of Applicant's debts became delinquent around the time of his 2004 short period of unemployment. However, he was unwilling to pay his debts after he became employed. His debts have only recently been resolved. Consequently, this mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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. Inasmuch as the majority of debts at issue became delinquent during Applicant's period of unemployment or shortly thereafter, this mitigating condition applies and is a factor for consideration.

Evidence that 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 is potentially mitigating under AG & 20(c). Applicant received financial counseling and has resolved his debt. He saved his money in 2008 and settled all his accounts in 2009, and provided documentation at the hearing to substantiate his claims. Therefore, AG & 20(d), the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts, applies.

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." 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature individual who began working after high school. He did not earn a great sum of money in his positions. He opened credit accounts in 1997, but was not able to continue to make payments on the accounts after 2004. The accounts were opened in 1997. The debts appeared on his credit report for a number of years. He now has obtained a position that pays a greater sum of money. He is doing well in his job. He saved his money and paid his debts in 2009. He has no current debt. He uses cash for all purchases. He has no credit

cards. He accepts responsibility for his actions. He is now better equipped to handle his financial affairs due to some financial counseling. He is aware that his past actions caused his financial problems and he does not want to be in such a situation again.

Overall, the record evidence does not leave me with questions or doubts with regard to Applicant's financial condition. As noted above, 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." Consequently, I conclude Applicant met his burden and mitigated the trustworthiness concerns arising from his finances. Access is granted.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

NOREEN A LYNCH
Administrative Judge