



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



In the matter of:)	
)	
-----)	ADP Case No. 08-08725
SSN: -----)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

October 30, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted a Questionnaire for Public Trust Position (SF-85P), dated March 18, 2008. On March 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns 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 May 21, 2009, Applicant answered the SOR and he admitted the factual allegations under the financial guideline. He requested a hearing before an administrative judge. DOHA received the request and the case to me on July 28, 2009. Applicant and Department Counsel agreed to a September 10, 2009, hearing date. On August 14, 2009, a Notice of Hearing was issued scheduling the hearing for that date.

The hearing was convened as scheduled. Department Counsel introduced eight exhibits (GE) 1-8, without objection. Applicant introduced five exhibits (AE) A-F, without objection. He testified on his own behalf. The transcript (Tr.) was received on September 18, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for a public trust position is denied.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He graduated from high school and received an Associate of Science Degree from a technical college in 1977. He continues to attend college courses and is working on his undergraduate degree (Tr. 45). He is divorced and has one son. He has worked for his current employer since February 2008 (Tr. 29).

Before his current employment, Applicant worked in the technology field. In 2001, his steady employment ended (Tr. 23). He was earning approximately \$60,000 annually. He had difficulty finding permanent professional employment, and he worked in various temporary lower paying positions. His marriage ended in divorce in July 2001, which added to his financial difficulties (AE B). His salary was approximately halved to \$30,000 when he found a full-time position in 2003. In 2003, his father was diagnosed with cancer. Applicant relocated to his father's home to care for him. He lost employment opportunities when he decided to care for his father.

In 2006, Applicant began a full-time position that paid well. The contract for his job ended in 2007, and Applicant faced unemployment for almost one year (Tr. 27). Applicant did not have health insurance due to unemployment. He incurred medical bills. He had surgery for a cornea transplant and he had another operation that was necessary. He depleted his savings and eventually lost his home. He could not maintain his payments on his accounts.

At issue are the following debts totaling approximately \$48,000 as noted in the March 27, 2009 SOR as allegations ¶¶ 1.a through 1.p.

1.a **Judgment** (\$1,163) UNPAID Applicant admits this represents unpaid rent for an apartment lease.

1.b **Medical** (\$515) UNPAID Applicant did not recall the account, but believes it occurred during his unemployment. He admits the debt.

1.c **Medical** (\$256) UNPAID Applicant admits this allegation.

1.d **Collection** (\$2,325) UNPAID Applicant believes this may be a duplicate of the alleged debt in 1.a. He has not researched the debt but included it in his repayment schedule.

1.e **Collection** (\$150) UNPAID Applicant denies this account.

1.f **Phone** (\$1,268) UNPAID Applicant admits this allegation and stopped paying during his period of unemployment.

1.g **Collection** (\$1,093) UNPAID Applicant admits this allegation represents a credit card account.

1.h **Auto** (\$9,800) UNPAID Applicant admits the car was repossessed. He stopped making payments when he was unemployed. He did not research the account.

1.j **Child Support** (\$4,434) Applicant denies the amount. He produced documentation that he has \$18 in arrears as of September 2009.

1.k **Collection** (\$2,644) UNPAID Applicant acknowledges this represents a credit card that had a balance of approximately \$500, but with interest and penalties it has increased to the current amount (Tr. 53).

1.l **Auto** (\$20,316) UNPAID Applicant admits this is another vehicle repossession in approximately 2003.

1.m **Medical** (\$2,795) UNPAID Applicant admits this allegation, but did not explain the reason for the account.

1.n **Medical** (\$490) UNPAID Applicant admits this allegation, but did not explain the reason for the account.

1.o **Medical** (\$243) UNPAID Applicant admits this allegation. This represents the surgery for the cornea transplant.

1.p **Collection** (\$136) UNPAID Applicant admits this allegation for a cable bill that was not paid.

Applicant obtained the services of a consumer credit counseling service in 2008 (AE D). Before 2008, he researched various debt management companies and determined that it was not in his best interests to use them (GE 6). He has a repayment plan (AE C). The debts alleged in the SOR are on the repayment plan. He has not started making payments. He did not want to commit to making payments if he does not receive a clearance and then does not retain his current job. He also explained that his son has sports expenses that Applicant pays (Tr. 57). His current salary is \$65,000 (Tr. 61). He estimates a net monthly remainder of \$500. He is current on his monthly expenses, including his \$400 car payment (Tr. 63). He rents a room and lives in a frugal fashion. He pays \$229 a month for child support (Tr. 42).

Applicant acknowledged responsibility for his delinquent debts. He does not dispute them. He paid two judgments for motor vehicle fines to the municipal courts in July 2009. The fines dated back to 2004 (AE F). He was in arrears in child support payments but as of September 2009, his arrearage was \$18 (AE E).

In response to the DOHA 2008 interrogatories, Applicant noted various accounts that would be paid in full in January 2009. He submitted his repayment plan. However, he has not followed the plan. He noted that his wages were garnished for the child support arrearage.

Applicant's employer recommends him for a public trust position. Applicant demonstrates diligence in his job duties and provides technical knowledge that has been indispensable to the company.

Applicant's previous supervisor recommends Applicant for a public trust position. He described Applicant as detail-oriented, pleasant, honest, and competent (AE A). His supervisor considers him one of the most trustworthy team managers. His management and communication skills are excellent. Applicant is responsible for large expenditures in his work.

Applicant's colleagues report he is a dependable team player. He is mature, logical, practical, and responsible. He is an asset to the organization. He is ambitious and is a leader. Applicant deal with sensitive contract issues in an efficient and professional manner (AE A).

Applicant is active in his son's life. He is a loving and devoted father. He presented 12 letters of recommendation from friends and colleagues.

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 overarching 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 from 2001 until the present. He acknowledged the accounts represented old debt for approximately \$48,000, including two vehicle repossessions. 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 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. Most of Applicant's debts became delinquent around the time of his first unemployment in 2001. He suffered further unemployment in 2007, and had lower paying jobs until his current position. However, he was unwilling to pay his debts after he became employed. 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 periods of unemployment and divorce, this was beyond his control. However, he has not acted responsibly by waiting to pay the delinquent debts. He does not want to pay the older debts in case he is not eligible for a position of public trust and loses his job. Some of the delinquent debts are small and could have been paid. This mitigating condition does not apply.

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 has not received formal financial counseling. He obtained the services of a credit consolidator. He has a repayment plan that includes the debts listed in the SOR. However, he has not started the repayment plan. He paid two judgments that were the result of fines in 2004. He does not have a significant child support arrearage. He is conditioning his repayments on obtaining a position of public trust. Therefore, AG & 20(d), the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts, does not apply.

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 has worked in a professional capacity his entire career. He is recommended for a position of trust by his supervisors and colleagues. He is a devoted family man. Applicant's debts started when he became unemployed in 2001. He experienced lower-paying jobs for several years. He found himself unemployed again in 2007. His marriage ended in divorce in 2001. He takes responsibility for the debts.

The debts appeared on his credit report for a number of years. In February 2008, he obtained a position that pays a greater sum of money. He is doing well in his job. He obtained the services of a debt consolidation company in December 2008. He has included all the debts that are listed on the SOR. However, he is waiting to start the repayment plan. He wants to be certain that he receives a position of public trust and does not lose his job.

Overall, the record evidence leaves me with questions and 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 has not met his burden and has not mitigated the trustworthiness concerns arising from his finances.

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
Subparagraphs 1.a:-1.p:	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.

NOREEN A LYNCH
Administrative Judge