



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



In the matter of:)
)
) ADP Case No. 08-09203
SSN:)
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

December 31, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 14 April 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F.¹ Applicant answered the SOR 2 July 2009, requesting a hearing. DOHA assigned the case to me 28 August 2009, and I convened a hearing 23 September 2009. DOHA received the transcript (Tr.) 30 September 2009.

Findings of Fact

Applicant admitted the SOR financial allegations. He is a 46-year-old infrastructure analyst employed by a defense contractor since February 1997. He will

¹DOHA makes trustworthiness decisions for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987. DOHA decides ADP cases under the policies and procedures established by Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the revised adjudicative guidelines (RAG) effective within DoD on September 1, 2006.

have access to sensitive medical data. He has not previously had a trustworthiness determination. He has two adult children with his first wife, whom he divorced in October 1999, and a six-year-old son with his second wife, whom he divorced in July 2007.

The SOR alleges, government exhibits substantiate, and Applicant admits, 21 delinquent debts totaling over \$43,000, falling delinquent between 2003 and the present. Most of the debts are small: 12 are less than \$500 each. However, Applicant has made no efforts to resolve the debts, and is unlikely to do so in the future.

Applicant acknowledges making poor financial judgments in the past, but also attributes his financial problems to multiple separations and reconciliations with his second wife beginning in 2003 and culminating in their divorce in July 2007. Initially, his ex-wife had custody of their son, but Applicant was given custody in August 2008 amid allegations of domestic violence in the home where the ex-wife lived with her new husband. There is some possibility that she will be ordered to pay Applicant child support. However, it seems unlikely that she will pay voluntarily if child support is ordered.

Applicant has received no financial counseling and has attempted no debt consolidation or resolution. He has made no payments on his debts and acknowledges not knowing where to start. He has considered filing for bankruptcy protection, but lacks the spare funds to pay the filing fees. He hoped to be able to start addressing his debts once his educational loan garnishment was completed in July 2009, but the fluidity of the situation with his son and ongoing legal expenses have made that impossible.

Applicant submitted no character or employment records. The case record suggests that few people are aware of his financial problems.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an applicant's suitability for public trust positions. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in RAG ¶ 2(a), the "whole person" factors. The presence or absence of a disqualifying or mitigating condition is not determinative for or against applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to sensitive information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Public trust determinations resolve whether it is clearly consistent with national security to grant or continue an applicant's eligibility for public trust positions. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case

against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to eligibility the applicant bears a heavy burden of persuasion.

Persons with access to public trust information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with national security" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.²

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the trustworthiness concerns. While some of Applicant's financial difficulties are reasonably attributable to the long process of separation and divorce from his second wife, he has been unable to take effective action to address his debts despite being employed full time since February 1997. However, his debts were also due to his irresponsible spending.³

Applicant potentially meets only one of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, indeed they are ongoing.⁴ While his second divorce and getting custody of his son were clearly circumstances beyond his control, he has not acted responsibly in addressing his debts since then, having not even resolved several small debts.⁵ Further, he remains unable to live within his means. In addition, there is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁶ There is very little evidence, and no corroboration, of any good-faith effort to satisfy his debts.⁷ Finally, given his unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put his financial problems behind him. I conclude Guideline F against Applicant.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶ 19.(a) inability or unwillingness to satisfy debts; (b) . . . the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations.

⁴¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁵¶ 20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

⁶¶ 20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

⁷ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions lead to the same result. Applicant is presumably a responsible adult, who nevertheless appears unsophisticated about his finances. Overall, the record evidence leaves substantial doubt about Applicant's eligibility and suitability for a public trust position. Accordingly, I conclude Applicant has not mitigated the trustworthiness concerns arising from his financial problems.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-u: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with national security to grant or continue eligibility for a public trust position for Applicant. Eligibility for ADP position denied.

JOHN GRATTAN METZ, JR
Administrative Judge