



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



In the matter of:)	
)	
SSN:)	ADP Case No. 09-04275
)	
Applicant for Public Trust Position)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 23 December 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 12 March 2010, and I convened a hearing 13 April 2010. DOHA received the transcript (Tr.) 21 April 2010.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-K (AE K submitted post-hearing).

²DOHA 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 adjudicative guidelines (AG) effective within DoD on September 1, 2006.

Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.c., 1.d., 1.g., 1.k., 1.o., 1.t., and 1.v. He is a 38-year-old site manager employed by a defense contractor since August 2008. He will have access to sensitive medical data. He has not previously had a trustworthiness determination.

The SOR alleges, and government exhibits substantiate, 24 delinquent debts totaling nearly \$64,000, falling delinquent after Applicant's chapter 7 bankruptcy discharge in July 2000. Applicant admits 17 delinquent debts totaling nearly \$20,000, and denies seven debts totaling just over \$44,000. Applicant denied some of the debts only because he disputes the alleged amount of the debt. Many of the debts are small: eight are less than \$400 each; another six are less than \$1,000 each. However, Applicant has made few efforts to resolve the debts.

Applicant is a cancer survivor, having been diagnosed with bone cancer in 1985, when he was 13 years old. He has been in remission for 15 years, but along the way has incurred extensive medical bills, not all of which have been covered by insurance. He has also had cancer-related surgeries, most recently in April 2009, when he had hip-replacement surgery.

Applicant had a bankruptcy discharge in July 2000. He attributed his bankruptcy to his medical bills from cancer treatment. He claims that his finances were stable after the bankruptcy until early 2004, when he was laid off from his job, and was unemployed for two months before relocating for a new job. However, his public trust questionnaire (GE 1) shows continuous employment since February 1998. Nevertheless, except for a three-month period beginning in May 2008, he has been continually employed since obtaining that new job in April 2004.

Applicant worked from April 2004 to April 2005 in a job that paid him \$80,000 annually. He worked from April 2005 to April 2006 in a job that paid him \$88,000 annually. He worked from April 2006 to May 2008 in a job that paid him \$117,000 annually. He was laid off in May 2008 and remained unemployed until August 2008, when he got his current job at \$83,000 annually. He had hip-replacement surgery in April 2009, and received temporary disability payments of 66% of his salary for 60 days before returning to work. In July 2009, he took over car payments on a \$33,000 new car loan his mother had taken out, then realized she could not afford.

Applicant's post-hearing submission (AE K) confirms his claims that he has been paying on the tax debts at SOR 1.c and 1.d (which includes the debt at SOR 1.u) for several years. AE J also confirms his claim that the debts at SOR 1.n and 1.o are duplicates. Accordingly, SOR debts 1.c, 1.d, 1.o, and 1.u are resolved for Applicant.

AE K also documents several post-hearing efforts to resolve outstanding debts. On 26 April 2010, Applicant settled the debt at SOR 1.q by accepting the creditor's offer of an 80% discount. The creditor had made the offer at the end of January 2010. On 23

April 2010, he settled a debt not in the SOR for 50% of the amount owed. The offer had been made at the end of March 2010. On 23 April 2010, he negotiated a 30% discount with the creditor at SOR 1.j, although the record does not show that the debt was actually paid. Similarly, on 26 April 2010, he negotiated a 40% percent discount with the creditor at SOR 1.i, with no proof the debt was paid. He settled the debt at SOR 1.n (duplicate of 1.o) on 23 April 2010 for an undisclosed amount. On 20 April 2010, he paid the medical debt at SOR 1.f that had been pending since September 2006, when all the insurance payments and adjustments had been credited to his account. On 14 April 2010, he paid the \$35 co-pay for SOR 1.h that had been pending since April 2007, when the insurance payments had been made.

Applicant has received no financial counseling and has attempted no debt consolidation or resolution. Except as noted above, he has made no payments on his debts. He has produced no plan to address his remaining delinquent debt.

Applicant's performance appraisals (AE A) and character and work references (AE C) prove that he is a good employee and trusted in the workplace. However, it does not appear that his character references are aware of his financial problems.

Policies

The AG list factors for evaluating a person's suitability for access to public trust information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. Still, specific adjudicative guidelines should be followed when a case can be measured by them, as they represent policy guidance governing access to public trust information. Considering the SOR allegations and the evidence as a whole, the relevant 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 substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to 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 the national security" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.³

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the trustworthiness concerns. Adjusting for duplicate accounts, Applicant incurred nearly \$63,000 delinquent debt after his bankruptcy discharge in July 2000. His brief unemployment in 2008, his temporary disability in April 2009, and his on-going medical issues do not adequately explain his financial problems. Except for establishing repayment plans for \$29,000 of delinquent state and federal taxes, Applicant took no action before the hearing to address his debts.⁴

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, indeed they are ongoing.⁵ His evidence does not establish that his financial problems were due to circumstances beyond his control, and even if it did, he has not acted responsibly in addressing his debts since April 2004, having not even resolved several small debts.⁶ Since early 2004, Applicant has been continuously employed. Setting aside the two years from 2006 to 2008 when he earned \$117,000 annually, his average annual salary was nearly \$84,000, and never lower than \$80,000. Yet, he took no action to address nearly \$34,000 delinquent debt until after his hearing. He then paid, settled, or negotiated settlement on seven debts representing about \$2,900 of SOR debt. However, those actions only highlight his financial lethargy. He paid two small, long-delinquent medical debts where his medical insurance had paid all but his co-pay amounts. He settled several accounts for which he had settlement offers from the creditors well before the hearing, with substantial discounts for payment. His negotiated settlements were also for substantial discounts.

Applicant submitted no budget or evidence that he is able to live within his means. In addition, there is no evidence that he has sought credit counseling or otherwise brought the problem under control.⁷ His post-hearing resolution of several small debts does not constitute a good-faith effort to satisfy his debts.⁸ DOHA is not the collection agent of last resort. 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.

⁴¶ 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.

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

⁶¶ 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.

⁷¶ 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.

⁸¶ 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, and cannot muster enough organization to satisfy small co-payment amounts due after his medical insurance has paid his medical bills. 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-b:	Against Applicant
Subparagraphs c-d:	For Applicant
Subparagraphs e-n:	Against Applicant
Subparagraph o:	For Applicant
Subparagraphs p-t:	Against Applicant
Subparagraph u:	For Applicant
Subparagraphs v-y:	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 eligibility for a public trust position for Applicant. Eligibility for ADP position denied.

JOHN GRATTAN METZ, JR
Administrative Judge