



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



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| In the matter of: |) | |
| |) | |
| |) | ADP Case No. 09-07198 |
| |) | |
| Applicant for Public Trust Position |) | |

Appearances

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

May 26, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s eligibility for public trust position is denied.

On 6 October 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing. The record in this case closed 21 February 2011, the day Applicant’s response to the Government’s File of Relevant Material (FORM) was due. He submitted no response. DOHA assigned the case to me 18 May 2011.

¹Consisting of the File of Relevant Material (FORM), Items 1-11.

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.d, l-j, and m-o. He is a 45-year-old shipper/packer employed by a U.S. defense contractor since July 2008. He has not previously had a background investigation.

The SOR alleges, and Government exhibits document, 16 delinquent debts totaling over \$56,000. Applicant admits ten debts totaling over \$18,000. Applicant has documented no efforts to resolve the debts.

Applicant completed his public trust application in August 2008 (Item 4). He did not disclose any financial issues. However, he discussed some debts with a government investigator in May 2009 (Item 7), and responded to interrogatories about a longer list of debts in March 2010 (Item 6). These three documents constitute Applicant's entire discussion of his debts.

Applicant did not give any explanation for his debts, nor did he document the claimed debt status in his March 2010 interrogatories. He claimed to have paid three debts (1.a, 1.g, and 1.m) and to be paying two more by payroll deduction (1.l and 1.p). He claimed to be making plans to pay four debts (1.d, 1.f, 1.k, and 1.o) and had no knowledge of three others (1.h, 1.i, and 1.n). The record is silent on Applicant's work record or character.

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, 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

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has significant delinquent debt that he has done nothing to address, despite knowing since at least May 2009 that the Government viewed the delinquent debts with concern.⁴ The March 2010 interrogatories, the October 2010 SOR, and the December 2010 FORM triggered no sense of urgency in Applicant to document the status of the debts or prove any debts had been paid. The record contains no evidence in extenuation, mitigation, or rehabilitation. Consequently, none of the financial considerations mitigating factors apply. Further, there is no evidence of a plan for repayment or the possibility of a plan for repayment. The record also lacks any information upon which to base a “whole person” analysis. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-p: 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

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

⁴¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;