



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



In the matter of:

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Applicant for Public Trust Position

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ADP Case No. 10-05992

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

March 30, 2011

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his Questionnaires for Public Trust Position (SF 85P), on July 9, 2009. On October 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on November 15, 2010. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 15, 2010, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to the Applicant on December 23, 2010. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a Response to the FORM on January 13, 2011, within the 30 day time allowed that would have expired on January 22, 2011. I received the case assignment on February 8, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to sensitive information is denied.

Findings of Fact

Applicant admitted all allegations in the SOR (Subparagraphs 1.a to 1.t). His admissions are incorporated herein as factual findings. (Item 4)

Applicant is 47 years old, married, and has two daughters. Applicant works for a defense contractor and has for the past two years. (Item 5)

On April 2, 2010, Applicant met with a government investigator to discuss his delinquent accounts. During that interview, the investigator reviewed a credit bureau report (CBR) that disclosed some accounts were opened in 2004 and thereafter. Applicant admitted he could not manage his money and took out too many credit cards. His debts consist of 15 credit cards, two loans, a rent debt, a cable television debt, and an unpaid telephone bill. The amounts of money owed range from \$215 as the lowest to \$2,095 as the highest. He admitted to the government investigator that he did not have enough income to pay his debts. His income of about \$1,900 monthly is used to support his wife and children. His monthly expenses totaled \$2,330. On September 10, 2010, he reviewed the summary of his April 2010 interview and attested to its veracity. (Items 6-9)

Based on CBRs dated September 2009, March 2010, and September 2010, the SOR alleged 20 delinquent debts totaling \$18,476 that began accruing in 2004. Applicant did not provide documentation that any of the debts are paid or resolved. He admitted to the government investigator that he has not participated in credit counseling or budget education. He provided no information concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. (Items 7-9)

Applicant was unemployed from October 2006 to December 2006. He was then employed until June 2008. His employment ended with his resignation from that job. He obtained another job in September 2008. Applicant's January 13, 2011, Response to the FORM stated that his large debt has not affected his job performance and he intends to file bankruptcy by the end of February 2011. As of the date of this decision no evidence of any bankruptcy filing was submitted by Applicant. (Items 5, 6, FORM Response)

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 the applicant or proven by Department Counsel and 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. See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 notes two disqualifying conditions that could potentially raise trustworthiness concerns in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Based on three CBRs and his admissions, Applicant has been unable or unwilling to satisfy delinquent debts that began accruing in 2004 and remain unresolved at present. The evidence is sufficient to raise these two disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial considerations trustworthiness concerns:

- (a) 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;
- (b) 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;

(c) 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies began accruing in 2004 and remain unpaid or unresolved. Because the problems are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. He did not present sufficient evidence that the accumulation of \$18,476 of delinquent debt was due to conditions beyond his control or that he attempted to responsibly manage the debts once they accrued, as required under AG ¶ 20(b). In fact, he acknowledged that between 2004 and the present he accepted many credit card offers, leading to the accumulation of debt.

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). He did not submit evidence that he received financial counseling or that he paid or resolved any of the 20 debts, which would indicate that the situation is under control. Nor, did he present evidence that he made a good-faith effort to pay or resolve them. There is no evidence in the record verifying that he formally disputed or investigated any of the SOR-listed debts, which is necessary to trigger the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination by considering the totality of the applicant's conduct and all relevant 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 trustworthiness determination 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 facts and circumstances surrounding this case. Applicant is a mature individual, who has worked for a defense contractor since September 2008. In April 2010, he learned of the Government's concerns relating to his financial delinquencies. In October 2010, DOHA filed a SOR, and in December 2010, the Government filed the FORM. For almost a year, Applicant has known that his delinquent debts were creating trustworthiness concerns and potentially affecting his employment. Despite that knowledge, he did not provide proof that he has taken sufficient steps to address any of the 20 delinquent debts. Applicant failed to demonstrate financial rehabilitation, which would indicate that the continuance of these unaddressed obligations is likely. The record contains insufficient evidence about his character, trustworthiness, or reliability, which could potentially mitigate the financial considerations concerns or make their recurrence less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from his financial considerations.

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
Subparagraph 1.a to 1.t:	Against Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge