



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



In the matter of:)
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Applicant for Position of Public Trust)

ADP Case No. 10-06514

Appearances

For Government: Raashid Williams, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

November 10, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the concerns raised under the guideline for Financial Considerations. Accordingly, his eligibility to occupy a position of public trust is granted.

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) signed on June 8, 2009 to apply for a public trust position. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding that it is clearly consistent with national interest to grant Applicant's request.

On February 17, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging trustworthiness concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DoD Regulation 5200.2-R, *Personnel Security program*, dated January 1987, as amended (Regulation);

and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

In his Answer to the SOR, signed and notarized on April 8, 2011, Applicant requested a hearing before an administrative judge. He also denied the eight SOR allegations. Department Counsel was prepared to proceed on May 20, 2011, and the case was assigned to me June 3, 2011. DOHA issued a Notice of Hearing on July 12, 2011, for a hearing on July 26, 2011. The hearing date was continued because of a death in Applicant's family. A notice for the re-scheduled hearing was issued on August 22, 2011. I convened the hearing on September 14, 2011. I admitted six Government Exhibits, identified as GE 1 through 6. Applicant testified and presented the testimony of two witnesses. He also offered 15 exhibits, which I admitted as Applicant's Exhibits (AE) A through O. DOHA received the transcript on September 22, 2011.

Findings of Fact

After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant is a 40-year-old senior engineer. He married in 1990, and separated in 1994.¹ He has one 19-year-old daughter. He has been in a committed relationship for the past 12 years. He spent a year in college, and then joined the Army. He served on active duty from 1991 to 1997, and was honorably discharged as a Specialist, pay grade E-4. He received several Certificates of Achievement and Army Achievement medals. He earned an associate's degree in 2005. Since June 2009, Applicant has worked for a technology consulting firm, where he assists with accreditation of DoD information systems. He began as a junior security analyst and, in 2010, he passed the examination to become a Certified Information System Security Professional (CISSP). (GE 1; AE B, H; Tr. 23, 39, 42, 62-65)

After Applicant left the Army in late 1997, he was unemployed for a few months. He found employment in March 1998. His mother had been paying his 1989-1990 student loans, and he was unaware of any problem with them. He later learned that two loans were in default. In 1999, his gross pay was \$35,000. About 25 percent of his net pay was garnished to pay the student loans, causing a significant decrease in funds available to pay for food, rent, and utilities. The used car he purchased needed extensive repairs. He returned the car and was told he did not owe anything further. However, that was untrue, and the account was sold to a collection agency. Applicant retained an attorney, who advised him to file a Chapter 7 bankruptcy petition. His petition listed no assets, and less than \$15,000 in liabilities. It was successfully discharged in 2001. (GE 3; AE E, J; Tr. 69-78)

¹ The evidence does not indicate if Applicant is divorced.

In 2002, Applicant was laid off, and remained unemployed into 2003. He moved in with a friend, and lived on his unemployment compensation. He decided to return to college, and began school in 2003. He maintained a grade point average of 3.5 or higher during several semesters. His classes were paid through the G.I. Bill, personal loans, and student loans. His G.I. Bill payments continued a few months past the date when he withdrew from school in June 2005. He was billed for the overpayment (allegations 1.b and 1.c). (GE 3; AE H; Tr. 78-80)

For four years, between 2005 and 2009, Applicant was unemployed. He worked sporadically, contracting his services to companies. His income dropped substantially. He also had three or four credit cards in the 2005-2006 time period, which he admitted contributed to his financial problems. He did not obtain full-time steady employment until he began his current job in May 2009. (GE 3; Tr. 55-56)

During the year and a half before the hearing, Applicant's mother suffered from cancer. Applicant spent funds for travel and accommodations to be with her. He also helped pay for her treatment and drugs. He testified he spent approximately \$700 per month on her care. After her death in July 2011, he shared the funeral and headstone expenses with his sister. He continues to share the mortgage payments on his mother's home with his sister. (Tr. 59-60, 90-91)

Applicant's partner, a dental assistant, testified on Applicant's behalf. They have known each other since 1999, and lived together since about 2002. She testified that Applicant had problems in the past because of unemployment. However, he is now financially stable. She was unaware of his delinquencies. Her income contributes approximately 20 percent to their expenses. Their combined incomes are sufficient to meet their bills, which are being paid in a timely manner. (Tr. 20-32)

Applicant had never received financial training from his parents. He has taken a financial counseling course and learned a great deal, such as keeping track of even small expenses to determine total cost of living. He found the course "very eye-opening." He now has one credit card, with a low credit limit of \$500. He maintains a checking account which, as of the hearing date, had a balance of almost \$28,000. (AE F, G, I; Tr. 58-59)

After earning his CISSP certificate, Applicant received a substantial raise. His current annual salary is \$90,000. His credit report of November 2010 shows 13 accounts in good standing. It shows substantially fewer delinquencies (three collection accounts) than his 2009 credit report (11 collection accounts). Applicant has paid two of the three collection account debts, and has a payment plan in place for the third. The debts listed on the SOR appear in his credit reports of August 2009, and May and November 2010. The status of the debts follows. (GE 4, 5, 6; Tr. 42)

Student loans, allegations 1.b, 1.c (\$3,336) - PAID – Applicant used these student loans while he attended college between 2003 and 2005. He provided a letter from the lender showing that he paid \$4,270 in September 2011, which satisfied both debts. (GE 3, 5; AE I, K; Tr. 47-48)

Student loan, allegation 1.d (\$13,678) - PAYMENT PLAN – Applicant agrees this debts is his, but disputes the balance. He was using the G.I. Bill to pay for his schooling from 2003 to 2005. He received his associate’s degree in January 2005; however, he continued attending school until June 2005. The G.I. Bill should have covered the costs from February to June. However, when he was billed for an overpayment, it erroneously included the time from February to June 2005. He has tried to have this amount corrected for years, but without success. He estimates the correction will reduce the balance by \$7,000. Between the May and November 2010 credit reports, he reduced the debt from \$15,831 to \$13,678. Although still awaiting correction of the error, he contacted the creditor and made an initial payment of \$3,680 in September 2011. He also initiated a payment plan of \$300 per month. (GE 5, 6; AE I, L; Tr. 48-50)

Student loan, allegation 1.e (\$15,340) - DELETED – Applicant disputed the validity of this account with the creditor. He provided documentation from the creditor stating that the account has been deleted from reports of the three credit reporting agencies. (GE 3; AE M; Tr. 50)

Collection account, allegation 1.f (\$664) - PAID – Applicant also disputed the validity of this debt. He paid the balance to a collection agency several years ago. Another collection company then bought the debt from the first agency. The second company provided a letter to Applicant stating that the account was “recalled and closed” on its system in October 2007. On November 1, 2007, the company also requested one of the credit reporting agencies to delete the account from Applicant's credit report. The account was not properly deleted by the credit agency. On September 8, 2011, the company again requested that it delete the account. (GE 3; AE N; Tr. 50-51)

Cell phone, allegation 1.g (\$382) – PAID. The account is approximately ten years old. Applicant paid it several years ago. He contacted the collection agency listed for the account, and the company provided a letter stating that the account is paid in full. (AE O; Tr. 51-52)

Medical debt, allegation 1.h. (\$42) – DISPUTED. Applicant denies that this debt is his, and contacted the creditor to dispute it. When he provided his identifying information, the creditor’s representative found his name with the debt, but with an address in another state, where Applicant has never lived. He provided the name and telephone number of the company spokesperson. He testified that she agreed it was not his account, but she was unable to provide written confirmation. (Tr. 52-54)

The chief executive officer (CEO) of the company where Applicant works provided a character reference. He noted that his senior management team consistently cites Applicant as a top performer, “a person of integrity, trustworthiness, and a valued member of my organization.” He described an instance when Applicant approached him about a need for information technology equipment at a local disadvantaged school. Applicant asked the CEO to help, coordinated the company’s efforts, and ensured the completion of the project. The CEO noted that such action is a “significant indicator of his admirable character.” (AE C)

Applicant received a rating of 4 or 5 (excellent or clearly outstanding) in almost every category in his 2010 performance evaluation. His supervisor testified that since he started with the company, Applicant has demonstrated exceptional character, work ethic, and integrity. Applicant disclosed his financial struggles to his supervisor when he was completing his security clearance application. The supervisor has been checking on his progress in resolving his debts. He notes that Applicant persistently worked toward his certification as a CISSP, while struggling with his mother’s and his partner’s health issues. Applicant has received several salary increases based on his excellent performance. (AE B, D, H; Tr. 33-46).

Policies

Each trustworthiness decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).² Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition under any guideline does not determine a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to sensitive information.

A trustworthiness decision is intended only to resolve the question of whether it is clearly consistent with the national security³ for an applicant to either receive or continue to have access to sensitive information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision

² Regulation §C6.1.1.1.

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

to deny or revoke an applicant's access to sensitive information. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case.

A person who has access to sensitive information enters 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 judgment, reliability and trustworthiness to protect the national security as her or his 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.⁴

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant accrued eight debts, with the bulk of the debt related to student loans. The record shows no evidence that his debts resulted from frivolous spending, drug or alcohol abuse, gambling, or other negative factors. The facts support application of two disqualifying conditions: AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*) apply.

The financial considerations guideline includes factors at AG ¶20 that can mitigate disqualifying conditions. The following mitigating conditions are relevant:

(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;

⁴ See *Egan*; Adjudicative Guidelines, §2(b).

(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; and

(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.

Applicant's indebtedness did not stem from negligence toward his debts, but from events beyond his control. In 2002, he was laid off, and unemployed from 2002 to 2003. He acted reasonably by moving in with a friend. After completing two years of schooling, he was unemployed and underemployed for four years, from 2005 to 2009. He also had unexpected travel and accommodation expenses when his mother became seriously ill, and he cared for her, and paid for her treatment and her medications. Mitigating condition AG ¶20 (b) applies.

Applicant has made a good-faith effort to resolve his delinquencies. As of the hearing date, he had paid four of the seven debts in full. He disputed two others. One was for \$15,340, and it has been deleted from his credit report. The one remaining debt still has a large balance. Between May and November 2010, he reduced this student loan from \$15,831 to \$13,678. He recently made a substantial additional payment of more than \$3,600. He also established a payment plan of \$300 per month. Applicant's debts are under control. He has completed financial counseling, which has helped him to learn how to better handle his finances. AG ¶20 (c) and (d) apply.

Applicant disputed two SOR debts. He successfully disputed the largest SOR debt, alleged at SOR ¶ 1.e., and provided evidence that it has been removed from his credit report. Applicant contacted the creditor as to the other disputed debt, allegation 1.h, but received only a verbal acknowledgement that it is not his debt. AG ¶ 20 (e) applies in full to allegation 1.e, and in part to allegation 1.h.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued significant debt, due in large part to his unemployment and underemployment for four years. His efforts to meet his family obligations despite his low income, demonstrate his reliability and maturity. His supervisor and CEO attest to his admirable character and integrity. Applicant has substantially reduced his one remaining SOR debt, and has a plan in place for the remaining balance. He has sufficient income and savings to meet his monthly payments on the debt.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for access to sensitive information. For all these reasons, I conclude Applicant has mitigated the concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F

FOR Applicant

Subparagraphs 1.a - 1.h

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of public trust is granted.

RITA C. O'BRIEN
 Administrative Judge