



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



In the matter of:)	
)	
)	ADP Case No. 10-07235
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 18 October 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing. The record in this case closed 24 January 2011, the day Department Counsel registered no objection to Applicant's response to the Government's File of Relevant Material (FORM). DOHA assigned the case to me 1 February 2011.

¹Consisting of the File of Relevant Material (FORM), Items 1-8 and Applicant's reply to the FORM (AE A).

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. He is a 44-year-old IT support coordinator employed by a U.S. defense contractor since December 1997. He has not previously had a background investigation. He remarried in May 2009 and has three children and two stepchildren.

The SOR alleges, Government exhibits document, and Applicant admits 12 delinquent debts totaling nearly \$53,000. Many of the debts are small: three are less than \$500 each; another four are less than \$1,000 each. However, Applicant has made no effort to resolve the debts.

Applicant completed his public trust application in August 2009 (Item 1). He disclosed that he had delinquent debts. He discussed these debts with a government investigator in March 2010 (Item 5), and stated his intent to resolve them.

Applicant attributes his financial problems to his divorce in 2005 and an accident he was in. He states that the debts were the result of the divorce settlement allocating the marital debt. However, he provided no corroboration of his claims. His October 2009 credit report (Item 7) shows that the delinquent debts are his individual accounts. A joint mortgage is current. Other joint accounts and authorized user accounts have been paid and closed. The four delinquent medical debts (SOR 1.b-e) total \$1,342 and may be the amounts due after his health insurance has paid its share.

Applicant's reply to the FORM is a plea for more time and an invitation for the Government to obtain the information Applicant could have submitted, but did not. 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, 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

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 March 2010 that the Government viewed the delinquent debts with concern.⁴ The October 2010 SOR and the December 2010 FORM triggered no sense of urgency in Applicant to even begin addressing his debts. 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-l: 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;