



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



In the matter of:)
)
-----) ADP Case No. 11-07761
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2013

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a public trust position. The evidence shows Applicant has a history of financial problems or difficulties consisting of state and federal tax liens and associated back taxes. His tax problems are unresolved and ongoing. Looking forward, it is too soon to predict if or when he will resolve his tax problems. Applicant failed to present sufficient evidence to overcome the concerns stemming from his tax problems. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant submitted an application for a public trust position in December 2010.¹ On July 25, 2012, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing trustworthiness concerns under Guideline F for financial considerations and Guideline E for personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information with Industry* (Feb. 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)² implemented by the DOD on September 1, 2006. The SOR recommended submission of Applicant's case to an administrative judge to determine his eligibility to occupy an automated data processing (ADP) position designated I, II, or III to support a DOD contract.

Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.³

On or about November 6, 2012, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁴ This so-called file of relevant material (FORM) was mailed to Applicant, who received it November 21, 2012. He did not reply within the prescribed 30-day period. The case was assigned to me January 11, 2013.

Findings of Fact

In general, the SOR alleged a history of financial problems or difficulties consisting of state and federal tax liens and associated back taxes. The SOR also alleged that Applicant provided false answers to questions about his financial history when completing official documents. In his reply to the SOR, Applicant admitted all the financial allegations, but he denied any intent to deceive or mislead anyone when he answered the questions. His admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

¹ Exhibit 5.

² The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

³ Directive, Enclosure 3, ¶ E3.1.7.

⁴ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as exhibits in this decision.

Applicant is a 64-year-old employee. He is seeking to obtain or retain eligibility to occupy a position of public trust for his job as a data center manager. He has had this job since early 2007.

Applicant completed an application for a public trust position in December 2010,⁵ and it is that application under review. He also completed a declaration for federal employment in November 2010.⁶ In both documents, he did not report or otherwise disclose that he had been subject to a tax lien within the last seven years. Likewise, he did not report or otherwise disclose that he was then delinquent on any federal debt.

The available documentary evidence establishes that Applicant has had four federal tax liens in the amounts of \$4,344, \$1,396, \$10,400, and \$13,381.⁷ The liens were filed by the IRS in April 1998, March 1992, October 1992, and May 1993, respectively.

The available documentary evidence also establishes that Applicant has had eight state tax liens (all from the same state) in the amounts of \$8,347, \$6,372, \$11,083, \$17,460, \$10,723, \$11,639, \$8,920, and \$6,612.⁸ The eight liens were filed by the state in October 2009.

In his reply to the SOR, Applicant did not dispute the tax liens, but does dispute the amounts owed to state and federal tax authorities. He explained that he had hired a firm to assist him in resolving his tax issues, and he presented documentary evidence showing that he retained a firm for that purpose in May 2012. Concerning the falsification allegations, he explained that he had no intent to deceive or mislead anyone. In addition, he stated that he did not discover the tax problems until after he completed the application.⁹

Discussion

Under Guideline F for financial considerations,¹⁰ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive

⁵ Exhibit 5.

⁶ Exhibit 6.

⁷ Exhibits 7, 10, and 11.

⁸ Exhibits 7, 8, 9, 10, and 11.

⁹ Exhibit 7. On this basis, I am not persuaded that Applicant gave deliberately false answers. Accordingly, the two falsification allegations under Guideline E are decided for Applicant.

¹⁰ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

indebtedness or financial problems or difficulties.¹¹ The overall concern under Guideline F is:

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.¹²

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties. The state and federal tax liens and associated back taxes raise serious concerns. It should be obvious, but it is nonetheless stated here, that an applicant who is unwilling or unable to fulfill their income tax obligations is not a good candidate for a position of public trust, which is a privilege granted by the federal government. His tax problems indicate inability or unwillingness to satisfy debts¹³ and a history of not meeting financial obligations¹⁴ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions, and the facts also suggest a degree of financial irresponsibility.

There are six mitigating conditions to consider under Guideline F. Any of the following may mitigate security concerns:

AG ¶ 20(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;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

¹¹ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, "the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.") (citation omitted).

¹² AG ¶ 18.

¹³ AG ¶ 19(a).

¹⁴ AG ¶ 19(c).

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;¹⁵

AG ¶ 20(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; or

AG ¶ 20(f) the affluence resulted from a legal source of income.

I have considered all the mitigating conditions, and none, individually or in combination, are sufficient to overcome and mitigate the concerns stemming from Applicant's tax problems, which are unresolved and ongoing.

For reasons not entirely clear from the record, Applicant fell behind on his state and federal income tax obligations. The result is multiple tax liens and substantial back taxes owed to state and federal tax authorities. In May 2012, he took the first step in resolving his tax problems by retaining a firm to assist him in doing so. He did not provide any additional information about this process in response to the FORM. At this point, he is facing a major problem that will not be easily or quickly solved. It is clearly too soon to predict if or when he will resolve his tax problems.

To conclude, the evidence leaves me with doubt about Applicant's eligibility and suitability for a public trust position. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due consideration to the whole-person concept.¹⁶ For all these reasons, I conclude Applicant did not mitigate the financial considerations concern.

¹⁵ ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999) (“[T]he concept of ‘good faith’ requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Such standards are consistent with the level of conduct that must be expected of persons granted a security clearance.”) (citations omitted); ISCR Case No. 02-30304 (App. Bd. Apr. 20, 2004) (relying on a legally available option, such as Chapter 7 bankruptcy, is not a good-faith effort) (citations omitted); ISCR Case No. 99-9020 (App. Bd. Jun. 4, 2001) (relying on the running of a statute of limitations to avoid paying a debt is not a good-faith effort).

¹⁶ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a–1.l:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a & 2.b:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for an ADP I, II, or III position. Eligibility for access to sensitive information is denied.

Michael H. Leonard
Administrative Judge