



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



In the matter of:)
)
) ADP Case No. 11-08393
)
)
Applicant for Position of Trust)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On August 27, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations.¹ The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

On September 11, 2012, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 12, 2012. DOHA issued a notice of hearing on October 24, 2012, and the

¹ The caption on the SOR was corrected to note it is an ADP and not an ISCR case.

hearing was convened as scheduled on November 27, 2012. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through E, which were admitted without objection. The record was held open until December 4, 2012, to allow Applicant to submit additional documents. He submitted AE F, which consisted of 12 pages. Department Counsel had no objection and it was admitted.² DOHA received the hearing transcript (Tr.) on December 5, 2012.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a through 1.f and 1.k. He denied the remaining SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 28 years old. He is single and has never been married. He earned a bachelor's degree in business administration in December 2008. He was unemployed from December 2008 when he was laid off from his job until May 2010. He currently lives with his parents to save money.³

Applicant worked in the construction field while he was attending college and during his summer vacations. He received some financial help from his family while attending school, but almost all of the funding for his college tuition and expenses were from student loans. He was required to begin repayment of his loans in approximately May 2009, six months after he graduated. When Applicant was laid off from his job, he contacted the student loan lenders and advised them of his inability to begin payments. He was advised by the government lender that if he could not pay the full monthly amount, then he should let the loans go into default status. They would not accept a smaller payment.⁴

In April 2010, Applicant began training with his current employer. He began working and earning an income in May 2010. He contacted the student loan creditors and worked out payment plans.⁵

The debts in SOR ¶¶ 1.f, 1.g, 1.h, and 1.i are student loans debts with the government. The debts in SOR ¶¶ 1.c, 1.d, and 1.e are student loans debts with private creditors. Applicant has been making payments on his government student loans since June 2011. His monthly payment is \$491.33.⁶ He has been making monthly payments on his private student loans since September 2012. His monthly payment is \$126. Applicant was unable to begin making payments to the private creditor until September

² Hearing Exhibit I is an email memorandum forwarding AE F to me and noting there was no objection.

³ Tr. 27.

⁴ Tr. 27-28, 36-37.

⁵ Tr. 38-39.

⁶ AE C and E.

2012 because he was making a car payment. When he paid off his car he began paying this student loan.⁷

Applicant accumulated other delinquent debts during his period of unemployment. The debts in SOR ¶¶ 1.a and 1.b were settled and paid in November 2012.⁸ The debt in SOR ¶ 1.j is for a credit card. Applicant has been making monthly payments of \$75 since January 2012.⁹ The debt in SOR ¶ 1.l was settled and paid in November 2012.¹⁰

The debt in SOR ¶1.k is for a credit card Applicant used to buy tires. He has contacted the creditor and made arrangements to pay \$100 per month beginning in January 2013.¹¹

Applicant earns \$17,500 annually. He works overtime when it is available. Although he lives with his parents and does not pay rent, he does contribute approximately \$220 for utilities. He is hopeful that by making consistent monthly payments on his student loans that the creditor will consider reducing the interest that accumulated thereby reducing the total amount owed. Applicant began addressing his delinquent student loans before he received the SOR.¹²

Applicant has consistently been a top performer in his company. His manager considers him one of his most reliable associates with production and quality scores consistently exceeding expectations. He is considered a model associate who gives 100 percent every day. Applicant has received numerous awards recognizing his ability in providing exceptional service to the company's beneficiaries and providers. He is a devoted professional.¹³

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

⁷ Tr. 22-25, 36-41; AE C and E.

⁸ AE A-1, D.

⁹ AE B, E.

¹⁰ Tr. 20-22, 25, 33; AE A-2, D.

¹¹ Tr. 34-35; AE D.

¹² Tr. 33-34, 41.

¹³ AE F-1 through F-12.

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."

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 applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Applicant was laid off from his job around the same time he graduated from college. He was unemployed for about 19 months. During that time his student loans became due and he was unable to begin payments. He contacted the creditors and told them of his situation. He also had difficulty paying other bills. After he got a job, he again contacted the student loan creditors and set up payment plans. He has been making payments on his government student loans since June 2011. After he paid off his car loan he began making payments to the private student loan creditor. He has settled and paid the small delinquent debts alleged and is making monthly payments on a credit card debt that became delinquent when he was unemployed. He has one remaining debt to pay. He contacted this creditor and will begin to make payments on the debt beginning January 2013.

Applicant's period of unemployment was beyond his control. He acted responsibly by contacting his creditors and setting up payment plans. He has been faithful in resolving his delinquent debts. He is paying his student loan debts, has resolved his smaller debts, and has payment plans with the remaining debts. I find all of the above mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 public trust position 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant began addressing his delinquent debts before he received the SOR. He has not ignored his debts, but rather contacted the creditors, and when he started earning a salary, he began whittling away at his debt. Applicant is a conscientious and valued employee. He is making a good-faith effort to pay his creditors, and live within his means. It is clear his financial problems are under control. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has mitigated financial considerations trustworthiness concerns.

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
Subparagraphs 1.a-1.i:	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 eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Carol G. Ricciardello
Administrative Judge