



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



In the matter of:)
)
) ADP Case No. 11-12597
)
Applicant for Public Trust Position)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant cosigned student loans and a lease for his daughter. Because of medical problems, his wife stopped working and he lost the ability to repay the debts when his daughter defaulted on her financial obligations. He assumed responsibility for the debts, established payment plans for two of the debts, and intends to pay the third debt in turn. He has a viable plan to resolve his financial problems, is in control of his finances, and established his financial responsibility. Eligibility to hold a position of trust is granted.

Statement of the Case

Applicant submitted an electronic questionnaire for a position of trust (Application) on July 21, 2011. On November 21, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing trustworthiness concerns under Guideline F (Financial Considerations).¹ Applicant answered the SOR on December 10, 2012, and requested a hearing before an administrative judge.

¹ The DoD acted under Executive Order 12968, *Access to Classified Information* (August 2, 1995), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and DoD Regulation 5200.2-R, *Personnel Security*

The case was assigned to me on January 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 15, 2013, scheduling a hearing for February 12, 2013. At the hearing, the Government offered exhibits (GE) 1 through 4. Applicant testified and offered exhibits (AE) 1 through 12. AE 12 was received after the hearing. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on February 21, 2013.

Findings of Fact

In his Answer, Applicant admitted all the factual allegations in the SOR, with explanations. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 55-year-old facility manager employed by a government contractor. He is a high school graduate, and completed some college courses around 1977. Applicant enlisted in the U.S. Marine Corps in October 1976, and retired in August 1998 with the rank of master sergeant (E-8). His service was characterized as honorable. He receives approximately \$2,027 per month in retired pay. Applicant married his wife in 1983, and they have two daughters, ages 28 and 24. His younger daughter lives with Applicant and depends on him for her support.

Applicant has been working in the same position, albeit for different government contractors during the last 13 years. Applicant was granted access to classified information at the secret level in 2000. (GE 1) There is no evidence to show that he has compromised or caused others to compromise classified information. Outside of the security concerns alleged in the current SOR, there is no evidence that Applicant had any other security issues of concern.

In his July 2011 SCA, Applicant disclosed he had financial problems. He revealed that he had cosigned two student loans and a lease for his daughter that were now delinquent and had been turned over to collection agencies. (SOR ¶¶ 1.a-1.c)

Applicant explained that around 2007-2008 his family income included his salary, his wife's salary (she was working full-time), and his retired pay. At that time, Applicant was financially able to help his daughter with her college expenses. To that effect, he cosigned three of his daughter's student loans and a lease. In about December 2009-2010, Applicant's wife stopped working due to medical problems, and he became the family's sole provider.

With the loss of his wife's income, Applicant was unable to continue paying his daughter's college expenses, his family's day-to-day living expenses, and his debts. In 2010, Applicant pulled his daughter out of college because he did not want to incur

Program, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DoD on September 1, 2006.

additional expenses he could not afford. He also sold his daughter's car to reduce his debt. Applicant contacted the creditors and tried to establish payment plans, but they refused to accept the small payments he could afford.

The debt alleged in SOR ¶ 1.a originated as a result of Applicant's daughter breaking her apartment lease two months early. Applicant tried to establish a \$200 a month payment plan, but the creditor denied his request. In November 2012, Applicant established a payment plan and agreed to pay \$400 a month. He made the \$400 payments in November 2012 and February 2013. Applicant anticipates paying off this debt in July 2013. (Tr. 56)

Applicant took money out of his 401(k) retirement plan to pay some of his delinquent obligations. He then acquired a debt to the IRS for the early withdrawal of his 401(k) funds. He established a \$400 a month payment plan with the IRS, and the debt was satisfied in December 2012. He then started paying the debt to the creditor alleged in SOR ¶ 1.b (student loan). Applicant made payments in December 2012 (\$200), January 2013 (\$400), and February 2013 (\$400). (Tr. 43-44)

The debt alleged in SOR ¶ 1.c is for one of his daughter's student loans. Applicant contacted the creditor, but he is not making payments on this loan because he cannot afford to do so. He plans to pay the other two SOR debts first, and then address this debt.

Applicant's daughter is not currently contributing in the payment of her student loans. Although she is working, she is not making enough money to pay her student loans. In addition to the two alleged student loans, Applicant cosigned a third loan that as of the hearing date was being deferred. Applicant agreed to start paying \$250 a month starting in March 2013.

Applicant takes his job and his obligations to the Government seriously. He acknowledged responsibility for his daughter's delinquent debts. He believes that his financial problems were caused by circumstances beyond his control – his wife's inability to work and the resulting reduction of the family's income. Applicant is aware that he needs to improve his financial situation. He would like to resolve his debts, but it will take time to do so. He promised that as long as he is employed he will continue his efforts to resolve his debts. Although his daughter is not making much money, she intends to contribute paying her debts to expedite the payment of the debts.

Applicant's credit reports showed he has been financially responsible. Except for the debts alleged in the SOR, his credit reports do not indicate a history of financial difficulties, or that Applicant has been living beyond his financial means. The only apparent inconsistency is that in June 2010, Applicant purchased a brand new luxury car for his wife. Applicant's 2012 net monthly earnings were approximately \$6,800, including his \$2,037 per month retired pay he receives from the Marine Corps. He has the financial ability to resolve his debts, although he cannot pay all the debts at the same time.

Applicant presented favorable testimony from three witnesses – his direct supervisor, the company general manager, and a coworker. By all accounts, he is considered to be honest, trustworthy, and a dedicated employee. His references have the utmost respect for his abilities, and lauded his knowledge and judgment. Applicant has been up-front with his supervisors about his financial problems.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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.” Regulation ¶ C6.1.1.1. 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.

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for a public trust position. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing suitability for a public trust position. Each decision must reflect a fair, impartial, and common-sense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

A public trust position decision resolves whether it is clearly consistent with the national security to grant or continue an applicant’s access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information.

Persons with access to sensitive and classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security 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. “[Access to sensitive information] determinations should err, if they must, on the side of denials.” AG ¶ 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the trustworthiness concern is that 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 ¶ 18)

In 2007-2008, Applicant cosigned two student loans and a lease for his daughter. She defaulted on her debts because of her lack of income and Applicant has been called to honor the debts. Because of wife's inability to work, Applicant was unable to make payments on these debts until recently. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the 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 delinquent debts are not the result of his financial irresponsibility. He tried to help his daughter with her college expenses and cosigned several of her student

loans and a lease. She defaulted on these obligations and he assumed responsibility for the debts. At the time Applicant cosigned these financial obligations, he had sufficient income to assume the debts.

Because of medical problems, his wife stopped working. After losing his wife's income, Applicant realized he could not continue assisting his daughter with her college expenses and withdrew her from college. He sold her car to reduce his debt, and withdrew money from his 401(k) retirement fund to pay debts. He contacted his creditors and established payment plans with two of the creditors alleged in the SOR. He intends to pay the third creditor after paying the first two creditors. Applicant's wife's inability to work is a circumstance beyond his control that contributed to or aggravated his financial problems. I find that he has been responsible in his efforts to pay his SOR debts.

AG ¶ 20(a) partially applies because Applicant's debt is current and unresolved. However, because his financial problems are due to circumstances beyond his control, and he has taken responsible action to address his debts (contacted creditors and established payment plans), it does not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(b) applies.

AG ¶ 20(c) applies in part. Applicant did not participate in financial counseling. However, Applicant receives credit because he continued his contact with the creditors and has established viable payment plans. I find that there are clear indications that his financial problems are being resolved. Applicant's actions so far established his ability and willingness to resolve his delinquent debts. On balance, the evidence available is sufficient to establish that Applicant has a track record of financial responsibility, and that he has a viable plan to resolve his financial problems. AG ¶¶ 20(d) applies. The remaining mitigating conditions are not applicable to the facts of this case (AG ¶¶ 20(e) and 20(f)).

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant honorably served 22 years in the Marine Corps. He has worked 13 years for government contractors while possessing a security clearance. Except for the current trustworthiness concerns, there is no evidence of any problems or concerns while he possessed a security clearance. By all accounts, he is considered to be honest, trustworthy, and a dedicated employee. His references have the utmost respect for Applicant's abilities, and lauded his knowledge, and judgment.

Applicant acknowledged responsibility for the debts he cosigned for his daughter. His financial problems were caused by circumstances beyond his control – his wife's inability to work and the resulting reduction of the family's income. His credit reports

showed his delinquent debts are not the result of his financial irresponsibility. Considering the record as a whole, Applicant has a viable plan to resolve his delinquent debt, and he is in the process of getting control of his financial situation. I find Applicant's current financial situation does not raise 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security to grant eligibility for a position of trust to Applicant. Eligibility for a position of trust is granted.

JUAN J. RIVERA
Administrative Judge