



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



In the matter of:)
)
) ADP Case No. 11-13546
)
Applicant for Public Trust Position)

Appearances

For Government: Eric Borgstrom, Esq. Department Counsel
For Applicant: *Pro se*

11/15/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the trustworthiness concern generated by his financial delinquencies. Eligibility to occupy a sensitive position is denied.

Statement of the Case

On April 23, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On May 18, 2013, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.o, 1.q, and 1.t, and requesting a hearing. The case was assigned to me on July 22, 2013. A notice of hearing was issued scheduling the case

for August 28, 2013. At the hearing, I admitted ten Government exhibits (GE 1-10), seven Applicant exhibits (AE A - G), and heard Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request for him to submit additional exhibits. Within the time allotted, Applicant submitted two additional exhibits that I admitted into the record as AEs H and I. DOHA received the transcript (Tr.) on September 5, 2013.

Findings of Fact

Applicant is a 33-year-old married man with three children, ages 12, 9, and 6, and one stepchild, age 16. He has been married for 11 years. Applicant graduated from high school in 1999. (Tr. 22) Since 2011, he has worked for a health insurance company that processes claims for armed services members.

Both Applicant and his wife have severe medical problems. Applicant has a heart defect and his wife has a neurological disorder. (Tr. 42-43) Since 2008, Applicant has been periodically experiencing severe chest pain and shortness of breath as a result of his illness. (Tr. 43) Applicant's wife experiences frequent bouts of pain, extreme dizziness, muscle spasms, and excessive fatigue. (AE I; Tr. 78) Over the years, she has undergone three brain surgeries. (Tr. 78) She continues to struggle with illness and has to take five to six medications daily, and have her liver function checked every six months. (Tr. 84-85) Together, Applicant and his wife have experienced symptoms related to their respective maladies that were severe enough to require emergency room treatment 30 times in the past five years. (Tr. 45) Currently, Applicant's physicians are considering whether he needs open-heart surgery. (Tr. 89)

Applicant and his wife have experienced employment difficulties as a result of their illnesses. In October 2010, Applicant lost his job, in part, because he was taking too much leave to care for his family while his wife was ill. (GE 2 at 9)¹ In December 2010, after Applicant's wife's second surgery, her employer terminated her. She remained unemployed until gaining her current job in February 2013. (Tr. 52-53) Although she is working, she is still struggling with her illness, and frequently misses time from work. Currently, she has a claim pending for Social Security disability compensation. (Tr. 80)

Until approximately five years ago, Applicant and his wife had no health insurance. (Tr. 43) Consequently, much of their health expenses were out-of-pocket, and began to strain their finances. By January 2013, Applicant and his wife had incurred approximately \$40,000 in delinquent debt, including \$11,000 from two voluntarily repossessed cars (subparagraphs 1.r, 1.s), \$18,000 in deficiencies from two involuntary repossessed cars (subparagraphs 1.v, 1.z), 11 medical bills totalling \$4,300 (subparagraphs 1.b-1.h; 1.j-1.m), \$3,100 in miscellaneous debts (subparagraphs 1.n,

¹Applicant got another job that same month. (GE 1 at 13)

1.o, 1.w, 1.x), four judgments (subparagraphs 1.a, 1.u, 1.aa, 1.bb), and five delinquent utilities (subparagraphs 1.i, 1.p, 1.q, 1.t, 1.y).

Applicant contends that he satisfied the debt listed in SOR subparagraph 1.t, but provided no corroborating evidence. SOR subparagraph 1.u is for a judgment that was entered against Applicant's wife for a debt she incurred. (Tr. 85) Applicant incurred the debts listed in SOR subparagraphs 1.a and 1.aa before he was married. (Tr. 24, 41)

SOR subparagraphs 1.r and 1.s were loans that Applicant took out in 2006 to purchase two used cars from the same lender. (GE 10 at 3) Applicant later discovered that car repairs were being charged to the loan. Consequently, he returned the cars to the seller. (GE 2 at 10) In the two years following the voluntary repossessions, Applicant purchased two more cars that ultimately were repossessed, as set forth in subparagraphs 1.v and 1.z. Although Applicant never satisfied these delinquencies, they are no longer collectible because the statute of limitations for debt collection in the state where he purchased the cars has expired. (Tr. 48)

AE H, a credit report dated September 5, 2013, that Applicant submitted after the hearing, verifies that he is responsible for subparagraphs 1.o and 1.q, two of the SOR delinquencies that he denied. (AE H at 1, 2)

Applicant's financial situation has gradually improved since he relocated five years ago to the state where he currently lives. (Tr. 100) Recently, he received a promotion that was accompanied by a five percent raise. (Tr. 60-61) He owns two cars that "are paid for" in full. (Tr. 69) He purchased them by saving money rather than by financing them. (Tr. 69)

Applicant maintains a budget. He has \$600 of monthly discretionary income. (Tr. 57) Applicant contends that this amount is insufficient to begin satisfying his delinquencies given his wife's history of health-related struggles that have limited her ability to work full time, and the number of children that they have. (Tr. 62-64) Approximately three months ago, Applicant met with an attorney to consider filing for bankruptcy. He has not retained an attorney yet. (Tr. 64)

Applicant is highly respected in his community. According to his pastor, he is active in the church, overseeing Christmas and Easter basket distributions each year, working with the church's food drives, and helping out with blood drives. (AE A)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 classified 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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s delinquent debts trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” The following mitigating conditions under AG ¶ 20 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;
- (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 and his wife, people of modest means, have been struggling to raise four children while coping with severe health problems requiring costly treatment.

Applicant readily acknowledges that irresponsibility and immaturity contributed to some of his financial problems, particularly with respect to the delinquencies that pre-dated his marriage. Nevertheless, the scope of Applicant and his wife's health problems, the corresponding health care expenses, and the periodic disruption to steady employment caused by the health problems over the years clearly triggers the application of the first prong of AG ¶ 20(b).

Applicant has yet to take any steps to pay or otherwise resolve his debts. He contends that he paid the debt listed in SOR subparagraph 1.t, but provided no corroborating evidence. He submitted a post-hearing credit report (AE H) indicating that he requested an investigation of two of his SOR debts that he did not recognize; however, the credit report confirmed that they were, in fact, his debts. I conclude that none of the remaining mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Applicant is highly respected in his community. He provided vivid and compelling testimony of the challenge of making ends meet as a man of limited income and education with four children, a sickly wife, and major health problems. Conversely, Applicant testified that he has approximately \$600 of monthly discretionary income. Given that eight of the SOR debts are each less than \$300,² I conclude that Applicant's surrounding adverse circumstances, though significant, are insufficient to outweigh the derogatory negative inference generated by his lack of any debt payments or any concrete plans to pay or resolve them in the future.

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

²SOR subparagraphs 1.b, 1.d, 1.e, 1.g, 1.h, 1.j, 1.p, and 1.m.

Subparagraphs 1.a-1.bb:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest for Applicant to be eligible to occupy a public trust position.

MARC E. CURRY
Administrative Judge