



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



In the matter of:)
)
) ADP Case No. 11-15139
)
 Applicant for Public Trust Position)

Appearances

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

10/31/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, the Government's File of Relevant Material (FORM), and the exhibits, I conclude that Applicant has mitigated the trustworthiness concerns raised under the guideline for financial considerations. His request for access to sensitive information is granted.

Statement of the Case

On March 11, 2011, Applicant completed a Questionnaire for Public Trust Positions (SF85P). On May 30, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed trustworthiness concerns under Guideline F (financial considerations).¹

In his June 26, 2013 Answer to the SOR, Applicant admitted the four allegations under the financial considerations guideline. He also requested a decision based on the written record in lieu of a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a written presentation of the Government's case in a FORM dated September 6, 2013. On September 13, 2013, Applicant received the Government's FORM, and was given 30 days to file objections and submit material

¹ This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992); and the Adjudicative Guidelines (AG), applicable to all adjudications or public trust determinations in which an SOR was issued on or after September 1, 2006.

to refute or mitigate the cited concerns. He timely responded, and submitted additional documentation. (Response) The case was assigned to me on October 28, 2013, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings and the evidence, I make the following findings of fact.

Applicant is 35 years old and single. He attended college part-time from 1996 to 2004, while working full-time, but did not complete a degree. He has not served in the military. He lived in State A from at least 2000 to 2010. As part of an internship, Applicant worked for a city government public works department in State A from 2000 to 2004. Between 2004 and 2010, he worked as a soft-drink merchandiser, a customer service representative, and an electrician. He was unemployed from July to November 2010. In November, he moved to State B, where he lived with his brother for one year. He lived on his savings and his brother's financial support. He worked as a door man for two months before obtaining his current employment in January 2011. He works for a defense contractor as a hardware asset specialist. (Items 5-7)

In his April 2013 interrogatory response, Applicant stated he has tried to accumulate savings to pay his debts, but "due to circumstances that were out of my control, I was unable to save as much as I expected." His job was not secure because the contract he supported was being re-competed. He was unsure if he would be able to retain his job if his employer lost the contract. He hesitated to use his savings for the debts because he would need the funds to support himself if he was laid off. He stated he had not had financial problems for years, other than the alleged debts. He also stated that, if he was retained by his employer after the contract award, he planned to pay the debts listed at allegations 1.a, 1.c, and 1.d. He could not afford to pay the largest debt, at SOR ¶ 1.b, because he did not have the funds, but if retained by his employer, he intended to pay his debts. (Items 6, 8, 9)

In 2004, while living in State A, Applicant purchased a property with a friend, intending to generate income through rent and eventual resale. When the housing market softened and then crashed, State A suffered a particularly high volume of foreclosures. Applicant was unable to rent the property. In 2007, his co-owner lost her job, and they could not keep up the payments. The house was foreclosed in 2008. The funds from the sale covered the mortgage loan, and Applicant and his friend did not owe a deficiency balance. Applicant's debts started to become delinquent at about this time. (Item 7)

Applicant stated during his 2011 security interview that he assists his family financially. He supports his parents, and helps them with housing expenses. In the past, he also paid the rent for his younger brother who was attending college and was unemployed. This assistance ended in 2011 when his brother won a full scholarship.

Applicant said at his interview that the financial care of his family members is part of his responsibility as the older brother. (Item 7)

The debts alleged in the SOR appear in Applicant's credit reports of July 2011 and February 2013. (Items 8, 9) He stated in his Answer of June 2013 that

I have managed to live within my means for the last 7 years, maintain stable employment, and accrue no further debt, until recently when I required a vehicle loan for the purchase of reliable transportation to and from work. (Item 4)

He provided documentation showing consistent payments on the auto loan, which is up-to-date. His credit reports show the majority of his accounts are in "Pays as Agreed" status. He also paid in full a debt of \$2,000 in 2012. (Items 6-9)

Applicant's delinquencies, listed in the SOR, totaled approximately \$34,000, including three credit card accounts, and a cell phone account. Applicant provided evidence that he has paid three of the four SOR debts, totaling \$13,041. (Items 1, 4, 7-9)

- **Credit card, allegation 1.a (\$1,145) - RESOLVED:** Applicant paid the balance in June 2013. He has tried to have the creditor forward written documentation that the debt is resolved, but with no success as of the date of his Response. He provided a confirmation number for his payment. (Item 4)
- **Credit card, allegation 1.c (\$11,107) - RESOLVED:** Applicant used this credit card for daily living expenses. In his Response to the FORM, he provided a letter from the creditor showing that the account is closed and that he paid the balance in full. (Response; Item 7)
- **Cell phone account, allegation 1.d (\$789) - RESOLVED:** The creditor offered Applicant a settlement in the amount of \$652. Applicant provided documentation confirming that, as of June 25, 2013, he had paid the settlement amount in full. (Response; Item 4)

Applicant has not paid the largest SOR debt:

- **Credit account, allegation 1.b (\$21,689): UNRESOLVED:** Applicant's 2011 credit report shows the account was opened in 2000, and became delinquent in 2008. He disclosed this debt in his application for a public trust position. In his April 2013 response to interrogatories, he said he did not have the funds to make payments. However, in his October 2013 Response, Applicant stated regarding this account, "I will be working diligently to maintain my current financial stability and pay the remaining debt owed to [company]." (Response; Items 5-9)

Applicant did not submit a pay statement from his employer. However, he completed a personal financial statement (PFS) in April 2013. His gross annual salary is \$46,792, with a net monthly income after deductions of \$3,289.² His monthly expenses, including rent, total \$2,520. He pays a total of \$698 monthly on three debts: an auto loan, insurance, and a cell phone.³ After deducting his total debts and expenses of \$3,218, Applicant has a monthly net remainder of approximately \$71. He has not received financial counseling. (Items 6, 7)

Policies

Each decision regarding a public trust position must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the AG. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them because they represent policy guidance governing the grant or denial of access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

A trustworthiness decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to sensitive information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke access to sensitive information for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a sensitive position, an applicant bears a heavy burden of persuasion.⁶ A person who has access to sensitive information enters into a fiduciary

² It appears Applicant miscalculated some figures in his PFS. He showed net annual salary of \$39,464. Therefore, his monthly salary after deductions would be about \$3,289, rather than the \$2,909 he listed. (Item 6)

³ Applicant listed his monthly rent payment of \$700 in both the Expenses section and the Debts section. I have included it in his Expenses list, and deleted it from his monthly debt payments. In addition, Applicant listed \$700 per month in car expenses; it is unclear from the record whether he included his \$328 car payment both as a monthly auto debt and a monthly auto expense. (Item 6)

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the following concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant’s delinquent debts, as of the date of the SOR, totaled \$34,000. His history of financial delinquencies supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, I considered the following conditions that can potentially mitigate 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; and

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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

Applicant's delinquencies are recent because, as of the date of the SOR, four debts were past due or in collection status. However, he has paid three of the four debts. His debts do not reflect frivolous spending or other negative conduct. His trustworthiness and reliability are not in question. AG ¶ 20(a) applies in part.

AG ¶ 20(b) relates to financial problems stemming from conditions an applicant could not foresee or control. Some of Applicant's debts resulted from such circumstances, which negatively affected his ability to meet his financial obligations. When the real estate market crashed in 2008, it was difficult for him to obtain renters for his property. His co-owner lost her job. Ultimately, they fell behind in the mortgage payments. Applicant was unemployed for several months in 2010. He then moved to State B, where he lived with his brother. He worked low-paying jobs in both State A and State B. For full mitigation, an applicant must show that he has acted reasonably in response to the unexpected circumstances. Here, Applicant conserved funds by living with his brother. And despite modest wages, he was able to keep all of his accounts in good standing, other than the four in the SOR. Applicant receives mitigation under AG ¶ 20(b).

The Appeal Board has held, ". . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR." In the same decision, the Board also stated, "There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time."⁸ Applicant has taken substantial steps toward resolving his debts. He has shown evidence of actual debt reduction through payment of debts. He paid three SOR debts, and submitted supporting documentation. Based on his resolution of these debts, I conclude he will continue to work toward resolving the last debt. AG ¶¶ 20(c) and (d) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's eligibility for a public trust position by considering the totality of the Applicant's conduct and all the circumstances. An 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

⁸ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has experienced several years of low-paying jobs, and his current job provides a modest salary. However, he has maintained the vast majority of his accounts in current status. The largest debt is a credit card account he opened in 2000 (allegation 1.b). He used it for living expenses, and accrued a significant balance. However, he maintained it in a current status for eight years. The account only became delinquent in 2008, when the real estate crash affected his ability to pay it. It is the only debt that remains unpaid. Applicant stated in April 2013 that once his job was stable, he would pay three debts, and he did. I conclude he will work to resolve the last debt, as he did the other three. In evaluating the whole person, I also considered evidence of Applicant's good character. Despite his relatively low income, Applicant believes it is his obligation to support his family financially, including his parents and brother. His follow-through on that belief contributed in part to his inability to pay some of his debts.

A fair and commonsense assessment of the available information shows Applicant has satisfied the doubts raised about his suitability for a public trust position. For these reasons, I conclude he has mitigated the trustworthiness concerns arising from the financial considerations guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.d	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to sensitive information. Applicant's eligibility for a public trust position is granted.

RITA C. O'BRIEN
Administrative Judge