



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



In the matter of:)
)
) ADP Case No. 12-03431
)
Applicant for Position of Trust)

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on April 29, 2014, and requested a hearing before an administrative judge. The case was assigned to me on June 11, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2014, scheduling the hearing for July 15, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted into evidence without objection.

Applicant testified but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on July 23, 2014.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for her current employer since 2000. He is applying for eligibility to hold a public trust position. He is a high school graduate and he attended some college courses, but he did not obtain a degree. He has never married and he has no children.¹

The SOR alleges an unpaid \$8,464 judgment (SOR ¶ 1.b) and three delinquent debts to financial institutions for \$16,203 (SOR ¶ 1.a); \$7,104 (SOR ¶ 1.c); and \$351 (SOR ¶ 1.d). The \$7,104 debt was transferred to a collection company who obtained the \$8,464 judgment. Applicant established that he paid the \$351 debt. He admitted owing the two remaining debts.²

Applicant was close friends with a married couple who ran into difficult times in the early 2000s. Applicant took cash advances from credit card accounts and loaned the couple about \$25,000 between 2002 and 2010. He estimated that they repaid about \$2,000 to \$3,000. Applicant's finances suffered while he assisted his friends. The husband promised to repay the loans, but he passed away in 2011. Applicant received nothing from the estate. The wife has never repaid any of the money, and she essentially told Applicant that unless she wins the lottery, he will never be repaid.³

Applicant was promoted to his current position in 2010. He used the extra salary from the promotion to pay or settle several accounts that were not alleged in the SOR, including three accounts whose balances at one time totaled more than \$25,000. The balance of the \$351 debt alleged in SOR ¶ 1.d was more than \$15,000 at one point. The December 2011 credit report listed the debt with a high credit of \$21,013, a past-due amount of \$702, and a balance of \$8,728. The debt was paid in full in February 2014.⁴

Applicant and his sister live in a house that they own with a mortgage. She had significant medical problems and she was out of work for more than a year. She was unable to pay her share of the mortgage loan. Applicant has been paying the entire mortgage loan for some time, which has hindered his efforts to pay his debts. She has returned to work. He credibly stated that he intends to pay his delinquent debts. He has not received formal financial counseling.⁵

¹ Tr. at 17, 27, 41; GE 1, 2.

² Tr. at 17, 37-38; Applicant's response to SOR; GE 2-5.

³ Tr. at 17-20, 32, 38-40; GE 2-5.

⁴ Tr. at 20-23, 27; Applicant's response to SOR; GE 2-5.

⁵ Tr. at 21-24, 27-32, 41-43; Applicant's response to SOR; GE 2.

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 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 trustworthiness 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 trustworthiness 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 delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶ 1.c alleges that Applicant owes a bank \$7,104. SOR ¶ 1.b alleges a judgment of \$8,464 awarded to the collection company that received the debt from the bank. The two allegations allege the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, SOR ¶ 1.c is concluded for Applicant.

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

- (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

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

Applicant permitted his finances to suffer while he helped two married friends in need. The husband promised to repay the loans, but he passed away in 2011. The wife does not appear to be willing or able to repay the loans. Applicant was promoted in 2010, and he has been repaying his debts. He paid or settled three debts with balances totaling more than \$25,000. He paid the \$351 debt alleged in SOR ¶ 1.d, which at one point had a balance of more than \$15,000. His sister developed significant medical problems, which hindered his repayment plans. She is back to work, and he credibly testified that he will pay his two remaining delinquent debts.

A trustworthiness adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶¶ 20(a) and 20(b) are partially applicable.

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.

I considered Applicant's stable work history, the factors that led to his financial problems, and the steps he has taken to remedy those problems. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the 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:	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 national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Edward W. Loughran
Administrative Judge