



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



In the matter of:)
)
) ADP Case No. 14-03303
)
)
Applicant for Position of Public Trust)

Appearances

For Government: Philip A. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

09/22/2015

Decision

MASON, Paul J., Administrative Judge:

Before Applicant obtained his present employment in 2013, he could only find part-time employment for three years. Since 2013, he has paid off two of the listed creditors and has developed a meaningful track record of satisfying his remaining delinquent debts. Eligibility for public trust position is granted.

Statement of the Case

On November 11, 2013, Applicant signed and certified an electronic questionnaire for investigations processing (e-QIP) (Item 2). On June 16, 2014, the Department of Defense (DOD) issued the Statement of Reasons (SOR) detailing trustworthiness concerns under financial considerations (Guideline F). (Item 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); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant furnished his answer to the SOR on June 9, 2014. He chose to have his case decided on the administrative record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on April 22, 2015. (The FORM contains Item 1, Item 2, and a March 19, 2015 credit report (Item 3).¹ In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on January 6, 2015. His response is dated June 10, 2015, however, there is no timestamp on the response to indicate when it was received by DOHA. On July 1, 2015, Department Counsel indicated he had no objection to Applicant's response.² The case was assigned to me on July 18, 2015.

Findings of Fact

The SOR alleges 15 delinquent accounts for credit cards and medical services. The total debt amount is \$16,237. Applicant admitted 11 accounts and denied the remainder. He claimed that accounts SOR 1.i, 1.j, 1.k, and 1.l, are the original creditors who sold their accounts to collection agencies. He believes the SOR 1.i creditor sold its account to the collection agency at 1.a; SOR 1j sold to collection agency at SOR 1.b; SOR 1.k sold to the collection agency at SOR 1.e; and SOR 1.l sold to the collection agency at SOR 1.c. When the duplicate entries and SOR 1.h and 1.m are removed from the SOR, Applicant believes he owes only about \$7,183. Applicant is correct. My calculations show that when the collection accounts (SOR 1.a, 1.b, 1.c, 1.e) and the satisfied accounts (SOR 1.h, and 1.m) are subtracted from \$16,237, the balance is \$7,762. The last payment activity on the delinquent debts was between 2009 and June 2012. See Item 3

Applicant is 32 years old and married. His wife recently gave birth to a daughter. Since March 2012, he has been living in a home owned by his mother. Though he pays no rent for the dwelling, he contributes to the utilities. From August 2005 to December 2009, he earned credits at a technical college. In August 2011, he received an associate's degree in sports management. Recently, Applicant earned a bachelor's degree in applied behavioral science. He intends to pursue a master's degree in business administration.

Before he started his present job in 2013, Applicant was employed part-time as a youth counselor from May 2011 to May 2012. In four different periods since May 2006, he was employed part-time in the ice cream department of a restaurant. He was also unemployed several times during the period. His last full-time employment was from May 2006 to June 2010, when he was an athletic director for a charitable organization. A downturn in the economy forced him out of his position, but he was unable to collect

¹ The credit report (March 19, 2015) is dated after the date of the SOR.

² Memorandum for Department Counsel, July 1, 2015.

unemployment compensation because he was employed by a faith-based non-profit organization. (Answer to SOR; Item 2 at 12-24)

Applicant indicated that he talked with every creditor about the delinquent debts and promised them that he was trying to address the debts as his earnings permitted. The delinquent debts will be discussed in the order they appear in the SOR.

SOR 1.a, credit card in collection for \$2,627. The original creditor is listed at **SOR 1.i** where the debt is charged off in an amount of \$1,686. Though Applicant explained in answer to the SOR that he would begin negotiations on this account when his other payment plans were resolved, he learned that the debt identifying the original creditor appears a second time in his credit report. He decided to try to remove one of the debts so the correct debt would appear in his credit report. Account is unpaid.

SOR 1.b, credit card in collection for \$1,283. The original creditor is listed at **SOR 1.j** where the debt is charged off in the amount of \$800. Applicant had not addressed this account because he was trying to settle other debts. As he has done in the **SOR 1.a** debt, he wanted to remove one of the debts so the correct debt would appear in his credit report. Account is unresolved.

SOR 1.c, credit card in collection for \$798. The original creditor is listed at **1.i** and where the debt is charged off in the amount of \$356. Applicant indicated that he was handling two other accounts that the collection agency is servicing. Account is unresolved.

SOR 1.d, credit card in collection for \$718. Applicant noted that a payment plan was underway, but provided no documentation showing a 12-month payment plan or that any payments (\$47 a month) had been made under the plan. Account is unresolved.

SOR 1.e, credit card in collection for \$665. The original creditor is listed at **SOR 1.k** where the debt is charged off in the amount of \$199. Applicant claimed a payment plan was active requiring him to make 12 payments of \$47 a month. Applicant provided no documentation of the plan or proof of payments. Account is unresolved.

SOR 1.f, credit card charged off in the amount of \$627. Applicant claims that the account should be lower because of payments made. He was unable to make a recent payment to the creditor because he was paying on other payment plans. However, as with **SOR 1.a, 1.b, 1.c, 1.d, and 1.e**, Applicant did not identify the other creditors or provide documentation of the corresponding payment plans. Account is unresolved.

SOR 1.g, cellular phone account in collection for \$227. Applicant avers that he cancelled his service and returned the creditor's telephone, but the creditor disagrees. He claims he is in negotiations to settle the account, but provided no documentation verifying negotiations. Account is unresolved.

SOR 1.h, cellular phone account in collection for \$86. Applicant left a balance with the creditor after ending his service. He satisfied the debt in March 2014. (Item 3)

SOR 1.m, a credit card account in collection for \$5,798. Applicant satisfied the account in 2014. (Item 3)

SOR 1.n, medical debt for \$329. Applicant claimed in his December 2014 answer to the SOR that he planned to take care of debt within six months. There is no reference to the debt in Applicant's response for the FORM dated June 10, 2015. Account is unresolved.

SOR 1.o, medical debt for \$68. Applicant stated that his insurance would not cover the debt, so Applicant did. No documentation was furnished to substantiate Applicant's claim. Account is unresolved.³

Applicant just received a promotion and increase in pay at his job. Since beginning his employment in 2013, he indicated that he eliminated \$5,854 in delinquent debt and satisfied the \$68 account listed at SOR 1.o. Applicant stated that:

I wish I could pay [the listed debts] off right away, but it is going to take some time. As I stated in my previous summary I am working with each [creditor] on my already tight budget. I do accept the challenge and I assure you that I am an honest man with great integrity. This stable employment will allow me to pay off this debt and remain in a situation to take care of my family. I totally understand the importance of this clearance and I ask that you not revoke my privileges and allow me to prove that am trustworthy and honest. (FORM response)

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 the person's loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is "clearly consistent with the interest of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the adjudicative guidelines (AG) which list potentially disqualifying conditions and mitigating conditions. These guidelines must be considered in the context of the nine general factors known as the whole-person concept to enable

³ The allegations in SOR 1.n and SOR 1.o are based on an April 6, 2013 credit report that does not appear in the FORM.

the administrative judge to consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the public trust 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 to support his case for eligibility to a public trust position.

A person who has access to sensitive information in a public trust position occupies a fiduciary relationship founded on trust and confidence. In this relationship, the Government must be able to repose a high degree of trust and confidence in those individuals it grants access to sensitive information. Decisions under this Directive include consideration of the possible risk an applicant may deliberately, negligently, or inadvertently fail to properly protect sensitive information.

Analysis

Financial Considerations

The trustworthiness concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The two pertinent disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant accumulated \$16,237 in delinquent debt to 15 creditors. The debts became delinquent between 2009 and June 2012. However, after subtracting the four listed duplicate entries and the two satisfied debts from foregoing total debt of \$16,237, the revised total is \$7,762. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions are potentially applicable: AG ¶ 20(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 reliability, trustworthiness,*

and good judgment); AG ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances); AG ¶ 20(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 AG ¶ 20(d) (a good-faith effort to repay overdue creditors or otherwise resolve debts).

AG ¶ 20(a) is inapplicable because Applicant still owes \$7,762 in delinquent debt to nine creditors or collection agencies even though he has incurred no new delinquent debt since June 2012.

AG ¶ 20(b) applies when the conditions that resulted in the financial problem were beyond the person's control, and the individual "acted responsibly under the circumstances." Applicant's last full-time employment ended in June 2010. Until he was hired into his current position in 2013, he was employed part-time or not employed at all. He receives considerable mitigation under the first prong of the condition for his underemployment and unemployment. Though he receives less mitigation for his actions in accumulating additional delinquent debt until June 2012, some mitigation is due for his responsible actions in keeping the creditors informed of his economic situation, his plan to pay smaller debts or negotiate payment plans, and his responsible action in satisfying two of the listed creditors.

Though Applicant supplied no evidence of counseling, he provided credible information that demonstrates he contemplated the steps he would take to repay the creditors. Item 3 documents his good-faith effort to pay off the account at SOR 1.h. before he received the SOR. In sum, the evidence reflects that he is regaining control over his delinquencies. AG ¶¶ 20(c) and 20(d) have some application.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables of the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following variables listed in 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 the participation was 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)*.

The final trustworthiness decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 32 years old. His wife recently gave birth to their first child, a daughter. Even though he lost his full-time employment in June 2010, he continued to pursue his education as evidenced by the associate's degree in sport's management that he received in 2011, and his recent accomplishment of a bachelor's of arts degree in applied behavioral science. In addition, he recently was awarded a promotion and a corresponding increase in his pay. In March 2014, five months before the date of the SOR, he satisfied the account at SOR 1.h. He also satisfied the account at SOR 1.m. He still owes \$7,762 to nine creditors.

Applicant is keenly aware he cannot satisfy all the creditors at once. He has exercised good judgment in informing each creditor of his intention to satisfy all the delinquent debts as his earnings permit. The DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, 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. All that is required is that an applicant demonstrate that he has '...established a plan to resolve his financial problems and taken significant actions to implement the plan.' The Judge can reasonable consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a)('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') 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. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be on the ones listed in the SOR.

(ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)) (internal citations omitted). Although I have considered that while Applicant has made several undocumented claims about payment plans and negotiating settlements with the listed creditors, I conclude the lack of such evidence demonstrates Applicant's inexperience in supporting his stated claims with other documentation besides the Government credit report. Taking into consideration Applicant's inability to collect unemployment compensation while trying to find full-time, stable employment between 2010 and 2013, and the fact that he incurred no new delinquent debt after June 2012, I conclude that Applicant has acted responsibly (as his earnings have permitted) to develop "a meaningful track record" of repaying his delinquent financial obligations. I am confident he will continue to execute his plan until all delinquent debts are extinguished, so that he can maintain his budget and responsibly manage his financial matters in the future. Having evaluated the evidence under the financial considerations guideline in the context of the whole-person

concept, Applicant has mitigated the trustworthiness concerns based on the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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 one (Guideline F):	FOR APPLICANT
------------------------------	---------------

Subparagraphs 1.a-o:	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 public trust position. Eligibility for access to public trust position is granted.

Paul J. Mason
Administrative Judge