



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



In the matter of:)
)
) ADP Case No. 14-05768
)
Applicant for Public Trust Position)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2017

Decision

CERVI, GREGG A., Administrative Judge:

Applicant did not mitigate the financial concerns. Eligibility for a public trust position is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on February 24, 2014. The Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) on December 15, 2014, detailing trustworthiness concerns under Guideline F, financial considerations.²

¹ Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data processing (ADP) position.

² The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Directive 5200.2R, *Personnel Security Regulations* (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 23, 2015, and included a letter of explanation. He elected to have the case decided on the written record in lieu of a hearing in an email dated February 17, 2016. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on May 9, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections to the proposed evidence, including a summarized personal subject interview, and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on May 20, 2016, but did not submit any additional evidence nor did he assert any objections to the Government's evidence. The case was assigned to me on March 24, 2017. Applicant remained sponsored for a trustworthiness determination by his employer. The Government's exhibits included in the FORM (Items 1 through 6) are admitted into evidence.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since 2014. He is a high school graduate and is attending college. He has been married since 2001 and has three children and a stepchild. He served in the U.S. Army from 2001 to 2011, and was honorably discharged. He was unemployed from September 2013 to February 2014, and fell behind on debts. In addition, he fell behind on a mortgage on a home he owned when his tenants left unexpectedly. He claims he was generally unaware of his delinquent debts because his spouse handled the family finances.

The SOR alleges four delinquent debts. Applicant admitted SOR ¶ 1.a, and denied the remaining debts. The SOR debts are supported by credit reports evidence in the record. In addition, the May 2016 credit report discloses five additional debts totaling over \$11,000, not included in the SOR. Applicant provided a partial credit report with his answer to the SOR, showing the SOR ¶ 1.c mortgage debt is no longer delinquent. He has not shown documentary evidence that the remaining debts have been satisfied or were otherwise appropriately addressed, despite his assertions.

There is no evidence of financial counseling or other assistance with debts, except that Applicant used a government program to reduce his mortgage payments.

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 interests of national security." Regulation ¶ C6.1.1.1. DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made. Regulation ¶ C8.2.1.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The 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 sensitive 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems that largely remain unresolved. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security 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.

There is insufficient evidence to determine that Applicant's financial problems have been resolved. He suffered a financial impact from a period of unemployment and loss of rental income, but he has not shown sufficient evidence that he has satisfied three of the four debts, or that they are otherwise resolved. Except for paying the home mortgage delinquency, the remaining SOR debts are not resolved.

Applicant has not demonstrated that he has gained control of his financial situation, and his overall efforts to address three of the four SOR debts is unsupported by the evidence. He has had a steady work history since 2014, yet has not shown satisfactory efforts to address the unresolved SOR debts, nor has he shown that his current financial status is sound and the likelihood of addition financial problems is reduced. There is no evidence of financial counseling or assistance with resolution of debts except for the mortgage debt listed in SOR ¶ 1.c. His history of financial problems continues to cast doubts on his current reliability, trustworthiness, and good judgment. Overall, with the exception of SOR ¶ 1.c, I find that the financial considerations concerns have not been mitigated.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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 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.

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis. The unresolved SOR debts along with additional delinquencies noted in his 2016 credit report, cast doubts on his overall financial responsibility and ability to meet financial obligations in the future. I find that the financial considerations have not been mitigated. I continue to have questions and concerns about his overall ability and willingness to meet his financial responsibilities.

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
Subparagraphs 1.a, 1.b, and 1.d:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Gregg A. Cervi
Administrative Judge