



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



In the matter of:)
)
) ADP Case No. 14-06790
)
Applicant for Public Trust Position)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2016

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant did not present sufficient information to mitigate financial trustworthiness concerns.

On May 15, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position with a defense agency. (Item 4) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on June 24, 2013. (Item 5) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the preliminary affirmative findings required to grant Applicant access to sensitive information. On July 20, 2015, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG).

Applicant answered the SOR on August 14, 2015. Applicant did not directly admit or deny each allegation. However, his explanation of the actions he has taken

concerning his debts is a clear indication of admission of the debts. Applicant requested a decision on the record. Department Counsel submitted the Government's written case on October 28, 2015. Applicant received a complete file of relevant material (FORM) on December 3, 2015, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely submitted information in response to the FORM on January 29, 2016. (Item 9) I was assigned the case of August 11, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM investigator (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant, in his response to the FORM, did not raise any objection to consideration of the Personal Subject Interview. Since there is no objection by Applicant, I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact.

Applicant is 48 years old. He received a master's degree in 1996. He has also completed some computer certification courses. He married in March 1997 and has two children and one stepchild. He was employed from May 2003 until March 2007 as a software developer, and from April 2007 until March 2009 as a software engineer. He was unemployed from April 2009 until November 2010 and received unemployment compensation. He was then a substitute teacher from December 2010 until May 2012. He returned to school to pursue a master's degree and was also employed as a research assistant from June 2012 until December 2012. In January 2013, he was employed in computer operations by a major computer firm. He is now employed in computer operations by a defense agency that is sponsoring him for the public trust position. (Item 4, e-QIP, dated May 15, 2013)

The SOR alleges and credit reports (Item 6, dated June 6, 2013; Item 7, dated October 29, 2014; and Item 8, dated September 28, 2015) confirm the following delinquent debts for Applicant: a collection account for \$4,653 (SOR 1.a); a student loan in collection for \$1,847 (SOR 1.b); medical accounts either charged off or in collection for \$399 (SOR 1.c), \$296 (SOR 1.d), \$266 (SOR 1.e), \$210 (SOR 1.g), \$122 (SOR 1.i), \$100 (SOR 1.j), \$50 (SOR 1.l), \$2,517 (SOR 1.n), \$1,252 (SOR 1.o), \$695 (SOR 1.q), \$399 (SOR 1.r), \$376 (SOR 1.s), \$334 (SOR 1.t), \$315 (SOR 1.u), \$239 (SOR 1.v), \$220 (SOR 1.w), \$135 (SOR 1.y), \$114 (SOR 1.z), and \$104 (SOR 1.aa); a utility debt in collection for \$234 (SOR 1.f), a cable bill in collection for \$167 (SOR 1.h); another utility bill in collection for \$85 (SOR 1.k); a judgment for apartment rent of \$1,145 (SOR

1.m); a credit card debt in collection for \$820 (SOR 1.p); and a utility debt in collection for \$169 (SOR 1.x). The total amount of the debt is approximately \$17,263.

In the PSI with the OPM investigator, Applicant reported that he defaulted on a credit card and a hospital bill, his bills have gone to collection, and he had a credit card cancelled or charged off for failure to pay the credit card debt. The 19 medical debts were the result of Applicant's daughter's birth in 2008. Applicant claims he had health insurance that should have covered the medical expenses, but he was billed for the costs. The other debts arose when he was unemployed or underemployed. Applicant claimed he was disputing some debts or attempting to set up payment plans for the debts. (Item 5, PSI, dated June 24, 2013, at 9-10)

In his response to the SOR, Applicant again noted that the 19 medical debts resulted from his daughter's birth on May 16, 2008. He again claimed the birth was covered by health insurance, but he was still billed for the cost. He attempted to contact the medical bill creditors but to no avail. The other SOR debts were incurred during period of unemployment or underemployment. He claims to have taken steps to contact creditors and establish payment plans. Applicant did not present any documents to verify the information. (Item 3, Response to SOR, dated August 19, 2015)

In his response to the FORM, Applicant claims that he became unemployed in 2008 and did not get full-time employment until 2013. During that time, he used student loans to attend a university. After gaining full-time employment, he started paying, and is current now, with his student loans. He is attempting to contact his creditors to negotiate settlements. He also is discussing his debt situation with a debt management company, so they can negotiate on his behalf. He did not present any documents to verify his statements or any actions he is taking on his debts. (Item 9, Response to FORM, dated January 4, 2016)

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 over-arching adjudicative goal is a fair, impartial and common sense 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations indicating 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant

with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant delinquent debts that he has not resolved. Applicant's delinquent medical bills, student loans, rent payments, and other charges are established by credit reports and Applicant's admissions. These debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the following Financial Considerations Mitigating Conditions under 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 current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply only in part. Applicant incurred delinquent debt because of his daughter's medical expenses, and his own periods of low-paying or unemployment. Some of the debts may have been incurred by conditions beyond Applicant's control. However, he failed to establish the second requirement of the mitigating conditions. He has not established that he acted reasonably and responsibly under the circumstances. He presented no information on payment of any debts, attempts to contact creditors, or any plans to resolve the debts. AG¶¶ 20(a) and 20(b) do not apply.

Applicant presented no information that he received financial counseling. There is no indication that his financial problems are being resolved and are under control. AG 20(c) does not apply.

Applicant did not establish a good-faith effort to pay his debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant has been employed full time in a reasonably paying position since January 2013.

Even though he is now a full-time employee, Applicant did not present a plan to resolve his financial issues. He did not show a meaningful track record of debt payments, Applicant's failure to pay his debts shows that he has not acted reasonably and honestly with regard to his financial duties and obligations. He is not managing his personal financial obligations responsibly. Based on all of the financial information, I conclude that Applicant has not mitigated trustworthiness concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a trustworthiness clearance 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. Applicant is required to show that he has a plan to resolve his financial problems and that he has taken significant action to implement that plan.

Applicant has not taken any action to resolve his debts. Applicant has not presented sufficient information to establish that he acted reasonably and responsibly within his limited finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a trustworthiness clearance. For all these reasons, I conclude that Applicant has not mitigated trustworthiness concerns arising under the financial considerations guideline. Eligibility for a trustworthiness position is denied.

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.aa Against Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge