



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)

ADP Case No. 15-01602¹

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

08/31/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the alleged financial and personal conduct trustworthiness concerns. National security eligibility for a position of trust is denied.

Statement of the Case

On April 1, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after September 1, 2006; and the AG effective within the DOD for SORs issued after June 8, 2017.²

¹ This case was initially processed as an ISCR case. It was subsequently converted to an ADP in July 2016. (Case File.)

² I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017.

On April 28, 2016, Applicant answered the SOR (Answer), and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's File of Relevant Material (FORM), containing seven Items, was mailed to Applicant on June 9, 2016, and received by him on July 20, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit documents or objections to the Government's Items; hence, Items 1 through 7 are admitted into evidence. On June 7, 2017, the Department of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

Applicant neither admitted nor denied the allegations contained in the SOR, but instead referred to attached documents. His answers are construed as denials. (Item 2.)

Applicant is 60 years old and married. He served on active military duty from 1976 to October 2005, when he retired. He completed a bachelor's degree in 2011. He started working for his current employer, a defense contractor, in 2012. He had worked for other defense contractors prior to this position. (GE 3.)

Based on credit bureau reports (CBR) from September 2015, February 2015, and November 2015, the SOR alleged seven delinquent debts that became delinquent between 2009 and 2012, and totaled about \$31,000. (GE 4, GE 5, GE 6.)

Applicant provided proof that he paid and resolved two of the seven debts. In January 2015, he resolved the \$7,000 judgment, entered in 2010 and alleged in ¶ 1.b (Item 2.) In April 2016, he resolved the \$12,322 debt alleged in ¶ 1.e. (Item 2.) He did not provide credible documentation that he paid, resolved, or disputed the other five debts.

Applicant did not disclose the 2010 judgment entered against him or any of the other six delinquent debts in the security clearance application (SCA) that he submitted in November 2012. (GE 1.) In January 2016, Applicant was interviewed by a government investigator during a background investigation. He discussed the status of his delinquent debts, including those subsequently alleged in the SOR, with the investigator. (Item 7.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

My decision would be the same under either set of guidelines.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for a position of trust seeks to enter 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 national security eligibility. 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. Finally, as emphasized in Section 7 of EO 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Beginning in 2009, Applicant accumulated delinquent debts that he has been unable or unwilling to fully resolve. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from financial problems:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Five of the alleged delinquent debts are ongoing, unresolved, and continue to cast doubt on Applicant's reliability. AG ¶ 20 (a) does not apply. There is no evidence to establish mitigation under AG ¶ 20(b) because Applicant did not provide an explanation of the circumstances underlying his financial problems. He did not submit evidence that he participated in credit or financial counseling. There are no clear indications that his five old SOR-alleged debts are under control. The evidence does not establish mitigation under AG ¶ 20(c). Applicant paid and resolved two debts, which demonstrated a good-faith effort to resolve the debts alleged in SOR ¶¶ 1.b, and 1.e. AG ¶ 20(d) applies to those debts. Applicant did not provide evidence to substantiate a reasonable basis to dispute the legitimacy of any debts. AG ¶ 20(e) does not apply.

Guideline E: Personal Conduct

AG ¶ 15 explains the trustworthiness concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise a trustworthiness concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose delinquent debts and a 2010 judgment in his 2012 SCA. He provided no explanation for not disclosing the requested information. Consequently, I find he deliberately omitted disclosing delinquent debts in his SCA. The evidence establishes the above disqualifying condition.

AG ¶ 17 provides a condition that could mitigate trustworthiness concerns raised under this guideline:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is insufficient evidence to establish mitigation under the above condition. The failure to disclose requested information is not a minor offense and casts doubt on Applicant's reliability and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is a 60-year-old married man, who retired from military service after 30 years. During an interview in January 2013, he was placed on notice that the Government had concerns about his delinquent debts. In April 2016, the Government issued a SOR to him, alleging delinquent debts and the non-disclosure of them. In July 2016, the Government's FORM specifically informed him that he failed to provide sufficient evidence to mitigate the allegations in the SOR, and gave him 30 days to submit additional information. He did not do that. Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, reliability, eligibility, and suitability for a position of trust. He failed to meet his burden to mitigate the trustworthiness concerns raised under the guidelines for financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph: 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f and 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge