



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-02313

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

09/23/2016

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated 26 delinquent debts, 20 of which are student loans. He failed to mitigate the trustworthiness concerns raised under the financial considerations guideline. His eligibility for a public trust position is denied.

Statement of Case

On May 11, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 6, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, (Financial Considerations). The action was taken under Executive Order 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 effective within the DOD for SORs issued after September 1, 2006.

On December 9, 2015, Applicant answered the SOR in writing (AR) and requested a hearing before an administrative judge. On April 21, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 13, 2016, DOHA issued a Notice of Hearing setting the case for July 11, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified, and offered Applicant Exhibits (AE) A through C into evidence. All exhibits were admitted without objections. The record remained open until August 5, 2016, to give Applicant an opportunity to submit additional evidence. He did not submit any additional exhibits. DOHA received the hearing transcript (Tr.) on July 21, 2016.

Findings of Fact

The SOR contained 26 allegations of delinquent debts. In his response to the SOR, Applicant admitted all allegations, except those alleged in SOR ¶¶ 1.t, 1.v, 1.x, 1.y, and 1.z. (AR.) His admissions are incorporated into these findings of fact.

Applicant is 28 years old and unmarried. Applicant earned an associate's degree in 2012. He began working for his employer in November 2011. He received a promotion two years ago, based on his performance. (Tr. 15-18, 31.)

Applicant's financial problems began when he started attending college in 2007. Initially he went full-time, but then decided to work and take classes. Because he was living an hour away from school and had difficulty getting to the campus, he dropped classes occasionally and lost tuition monies. Other times he did not have enough money to attend school. Over eight years, Applicant borrowed about \$90,000 in student loans. He has made sporadic payments on those loans. After he started his current position, his brother moved in with him, but did not contribute to the bills. They lived together for three years, until a year ago. During that time, Applicant became responsible for many expenses, including payday loans he used to pay bills. He admitted that he made poor and immature choices during these years. (Tr. 19-24.) He stated that his student loans became delinquent when he forgot to put them into a deferred status. (Tr. 40.)

Applicant was unemployed several times. In 2008 he lost a temporary position because he was sick and failed to report his status to his manager. In 2009 he was working in a temporary position on a contract. When he completed a project he lost that job. He left another position rather than being terminated. (Tr. 33-35.)

Based on credit bureau reports (CBR) from February 2015, October 2015, and July 2016, the SOR alleged 26 delinquent debts which became delinquent between 2008 and 2015. (GE 2, GE 3, GE 4.) The status of each debt is as follows:

SOR ¶ 1.a This educational loan for \$28,996 is in collections. Applicant stated that he has tried to establish a payment plan. He has been unsuccessful. The debt is unresolved. (Tr. 37-38.)

SOR ¶¶ 1.b through 1.m: The total balance owed on these 12 educational loans is \$34,773. The reported total past-due amount on these loans is \$2,242. According to the July 2016 CRB, the status of these loans is “pays as agreed.” (GE 4.) However, Applicant said that he is not making consistent payments on them because he does not have enough money. He said they are deferred, but there is nothing in the record to confirm that status. (Tr. 38-40.) These loans are unresolved.

SOR ¶¶ 1.n through 1.q: The total balance owed on these 4 educational loans is \$20,043. One of them was charged off. The other three reported a total of \$465 for past-due amounts on the loans. Applicant said these loans are deferred until he can “figure out how to pay” them. (Tr. 42-43; GE 4.) These loans are not delinquent at this time.

SOR ¶¶ 1.r and 1.s: The total balance owed on these 2 educational loans is \$45,940. Both loans were charged off. Applicant is not making payments on these loans. (Tr. 45; GE 4.) They are unresolved.

SOR ¶ 1.t: Applicant testified that he paid the \$820 charged-off debt owed to a sporting goods store. (Tr. 45-47.) According to the July 2016 CBR, it is charged off. (GE 4.) Applicant did not submit proof of payment. It is unresolved.

SOR ¶ 1.u: This educational loan is the same loan referenced in SOR ¶ 1.a, which is unresolved. (Tr. 47.)

SOR ¶ 1.v: The \$325 collections account is a delinquent cell phone debt. It is unpaid. (Tr. 47.)

SOR ¶ 1.w: The \$298 collections account is another delinquent cell phone debt. It is unpaid. (Tr. 47.)

SOR ¶ 1.x: The \$93 collections account was a delinquent gas bill. It is paid. (Tr. 47-48; GE 4.)

SOR ¶ 1.y: Applicant testified that he paid the \$40 delinquent medical debt. (Tr. 49.) According to the July 2016 CBR, it is unpaid. (GE 4.) Applicant did not submit proof of payment. It is unresolved.

SOR ¶ 1.z: The \$109 collections account was a delinquent gas bill. It is paid. (Tr. 49-50; GE 4.)

Two years ago Applicant’s salary increased to \$56,000 annually, which was \$10,000 more than he had been earning. He submitted a detailed budget. His net monthly income is \$3,000 and his expenses are \$2,900, leaving minimal money

remaining. (Tr. 30; AE B.) He does not have money budgeted for repayment of his student loans. (Tr. 41.) He said that he is beginning to stabilize his budget, and no longer uses payday loans. (Tr. 43.) He acknowledged that he owes between \$100,000 and \$120,000 for student loans and other debts. (Tr. 50.)

Policies

Positions designated as ADP I, ADP II, and ADP III are classified as “sensitive positions.” (See DoD 5200.2- R ¶¶ 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 the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD 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 Adjudicative Guidelines (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 AG ¶ 2, describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (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. Directive ¶ E3.1.15, further states that the 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. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies for access to sensitive information 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 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.

Section 7 of Executive Order 10865 provides that “Any 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 *also* 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 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.¹

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

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

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Since about 2008 Applicant began accumulating delinquent debts, which he has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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 has incurred substantial delinquent debts, which continue to date, the majority of which are student loans. He provided minimal evidence from which to establish a track record of debt resolution. He failed to demonstrate that conditions beyond his control contributed to his financial problems or that he acted responsibly under such circumstances or that similar delinquencies are unlikely to recur. The evidence does not support the application of AG ¶ 20(a) or AG ¶ 20(b).

Applicant did not provide evidence that he participated in credit or financial counseling, or documentation demonstrating that his financial problems are under control. The evidence does not establish mitigation under AG ¶ 20(c). Although he asserted that he paid some debts, he did not submit proof of those payments. He did provide evidence that he made a good-faith effort to pay two gas debts. Five student loans are currently in a deferred status. AG ¶ 20(d) provide some mitigation as to those allegations.

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a 28-year-old man, who has a long history of financial problems, which are attributed to his poor decisions. Although he stated that his financial situation is beginning to stabilize, the evidence, including his budget, does not confirm that. Based on the record, there is insufficient evidence to conclude that the likelihood of continuation of these problems is minimal. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not mitigate the trustworthiness concerns arising from his delinquent debts.

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
Subparagraphs 1.a through 1.m:	Against Applicant
Subparagraphs 1.n through 1.q:	For Applicant
Subparagraphs 1.r through 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	For 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. Eligibility for access to sensitive information is denied.

SHARI DAM
Administrative Judge