



**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. 15-02446

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

09/09/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On November 20, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated February 3, 2016.¹ Applicant received the FORM on February 12, 2016. He did not submit additional information for the record. I received the case assignment on August 19, 2016. Based on a review of the case file, I find Applicant has not mitigated the trustworthiness concerns raised. Eligibility for a position of trust is denied.

¹The Government submitted five items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted allegations ¶ 1.a, 1.b, 1.d, 1.f, and 1.h, under Guideline F, with explanations. He denied SOR allegations ¶ 1.c, and 1.g., stating that they were paid in 2015. (Item 1)

Applicant is 41 years old. He is a supervisor of quality programs for a defense contractor. Applicant obtained his undergraduate degree in October 2012. (Item 2) Applicant is divorced and has one child. He has been employed with his current employer since December 2009. This is his first application for a position of trust, which he completed on January 8, 2013. (Item 2)

The SOR alleges eight delinquent debts totaling approximately \$18,884. These debts include charged-off accounts, medical collection accounts, and a 2013 judgment. (Item 1) Credit reports confirm the debts. (Items 4, 5, and 6)

Applicant explained in his SOR Answer that he was unemployed for a period of time in 2008, when he was fired. He believes that this was not just and that he was reliable and had earned achievement awards. (Item 3) He cites to several reasons for his financial difficulties. His then wife stopped working, his employer “under withheld” income taxes, and divorce. He disclosed on his application that he “just got into too much credit card debt and was unable to pay it back.” He also noted other non-SOR debts that he was paying. He did not submit any documentation.

In 2013, during an investigative interview, Applicant explained that he had tax liens but they have been satisfied and released. He also stated that he intended to pay his other debts by 2013. The delinquent debts stem from as early as 2007. There is no information in the record that Applicant made any payments or had a plan to resolve the delinquent debts on the SOR. He did not present a personal financial statement. Applicant stated that the debts in 1.c and 1.g are duplicates (\$807). (Answer to SOR)

Applicant noted that he is working to pay off the debts in the SOR. As to SOR 1.a, in the amount of \$14,432, for a voluntary truck repossession, he stated that would contact the creditor to arrange a settlement. However, Applicant did not present any documentary evidence of payments for any SOR debts. He was emphatic that he intends to pay his debts. There is no information in the record concerning financial counseling.

Policies

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

Applicant's admissions and credit reports establish his delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." An unpaid debt is a continuous course of conduct for the purposes of DOHA adjudications. See, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). He has unresolved debts. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially apply. Applicant provided several explanations. He has delinquent accounts but offered no evidence to corroborate his claims or update the status of the accounts. He has been employed since 2009. Applicant did not present new information regarding the status of the delinquent debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant claims he is working to resolve the debts, but he provided no documentary evidence to support his claim. There is no information about financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Consequently, I find that there are not clear indications that his financial problems are being resolved or are under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of an applicant's conduct and all the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a public trust position.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 41 years old. He has worked for his current employer since 2009. Applicant offered several reasons for his delinquent accounts, but provided no nexus for the debts and their current status. He stated that he wanted to pay his debts. He paid his tax liens, which are released. However, he has not provided information to show good-faith efforts to pay even some of the smaller debts. He has not demonstrated a track record of financial responsibility and good judgment. He has not mitigated the security concerns under the financial considerations guideline.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of Applicant's trustworthiness does not necessarily indicate anything adverse about his character or loyalty. It means that the individual has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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:	Against Applicant
Subparagraph 1.c:	Duplicate
Subparagraphs 1.d-1.h:	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 a position of public trust. Eligibility for access to a position of public trust is denied.

NOREEN A. LYNCH.
Administrative Judge

