



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



In the matter of:

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ADP Case No. 15-03630

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Applicant for Public Trust Position

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Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

05/23/2017

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 September 2, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work with a defense agency. (Item 3) The Department of Defense (DOD) could not make the affirmative findings required to grant Applicant access to sensitive information. On November 27, 2015, DOD issued Applicant a Statement of Reasons (SOR) for financial trustworthiness concerns under Guideline F. DOD took the action under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on December 17, 2015 (Item 2). He admitted the seven allegations of delinquent debt. He requested a decision on the record. Department Counsel submitted the Government's written case on February 3, 2016 (Item 6). Applicant received a complete file of relevant material (FORM) on February 10,

2016, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide any information in response to the FORM. The case was assigned to me on February 15, 2017.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is 28 years old, graduated from high school in June 2008 and from a career technical school with an associate's degree in computer drafting and design in 2012. He is single. He is employed by a staffing firm which provides personnel to defense contractors. (Item 3, e-QIP, dated September 2, 2014)

The SOR alleges and credit reports (Item 4, dated October 26, 2015; Item 5, dated September 11, 2014) confirm the following seven delinquent debts for Applicant; a student loan charged off for \$33,249 (SOR 1.a); a student loan charged off for \$4,136 (SOR 1.b); a student loan past-due for \$959 on a balance of \$9,112 (SOR 1.c); a student loan in collection for \$266 (SOR 1.d); a student loan in collection for \$6,210 (SOR 1.e); a telephone service debt in collection for \$247 (SOR 1.f); and a debt to a fitness center in collection for \$386 (SOR 1.g). Applicant listed the debts on his e-QIP (Item 1), and he admitted the debts in his answer to the SOR. (Item 2)

Applicant has worked for the employment agency since October 2013. His net monthly income is \$1,960, with expenses of \$1,501, leaving a monthly net remainder of \$359. Since graduating from high school, he worked various low-paying jobs and had periods of unemployment from June until October 2013, and June 2008 until November 2009. Applicant acknowledged his delinquent student loans in his response to the SOR. He believed the loans were deferred, and learned the loans were not deferred when he received the SOR.

He realizes that he needs to rectify his financial status to maintain his career. When he answered the SOR in 2015, he stated he was in the process of making payment arrangements with the creditors. He provided a spreadsheet listing the amount he wanted to pay monthly on each debt. The information indicates his intent to start making payments on the debts, starting between December 2015 and January 2016. He did not present any information on any payments made on the debts. He only provided the names and telephone numbers of the individual's from the creditors with whom he discussed his debts in 2015. The FORM advised Applicant that it is his burden to provide information to mitigate the trustworthiness concern. In spite of this advice, Applicant provided no additional information in response to the FORM.

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, thereby indicating poor self-control,

lack of judgment, or unwillingness to abide by rules and regulation. These issues 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 position of trust. 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 student loan and small consumer debts that he has not resolved. Applicant's delinquent debts are established by credit reports and Applicant's admissions. The 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 do not apply. Applicant incurred student loan debt deliberately and freely to finance his education. Applicant's debts are numerous, recent,

and not incurred under circumstances making recurrence unlikely. The financing of his education through student loans are not unusual circumstances or beyond Applicant's control.

Applicant presented no information that he received financial counseling, and that he is addressing and resolving the debts. He stated in 2015 that he would contact the creditors. Two years later, he did not present any information of any arrangements, plans, or payments to the creditors. Applicant did not establish a good-faith effort to pay his debts, or present a systematic method of managing his debts. He has not established that he acted reasonably and responsibly under the circumstances. There is no indication that his financial problems are being resolved and are under control.

Applicant's failure to establish payment of or a plan 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 established that he has a plan to resolve his delinquent debts. He has not taken sufficient actions to reasonably and responsibly resolve his delinquent debts and manage his financial obligations within his resources. Accordingly, he has not established that he can be trusted to manage sensitive information. Overall, the record evidence leaves me with questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and his eligibility and

suitability for a position of trust. For all these reasons, Applicant's 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.g: 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