



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



In the matter of:

ADP Case No. 15-03892

Applicant for Public Trust Position

Appearances

For Government: Douglas Velvel, Esq., Department Counsel

For Applicant: *Pro se*

11/18/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On April 25, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing trustworthiness concerns 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); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On May 7, 2016, Applicant submitted an answer to the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2016, and the hearing was convened as scheduled on October 18, 2016. Government Exhibits (GE) 1 through 3 were admitted in evidence without

objection. Applicant testified. He did not submit any documentary evidence at the hearing. The record was held open until October 31, 2016, to allow Applicant to submit documents. He submitted one that is marked as Applicant Exhibit (AE) A. It is admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 25, 2016.

Findings of Fact

Applicant admitted all of the allegations in SOR except ¶ 1.d, which he denied. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old. He holds bachelor's and master's degrees. He served in the National Guard from 1981 to 1989 and was honorably discharged. He married in 1987 and divorced in 1989. He has a 26-year-old child from the marriage. He was married from 1993 to 2002. His wife passed away. He has an 18-year-old son from the marriage. He remarried in 2007 and divorced in 2009. He has no children from the marriage. He has been employed by a federal contractor since October 2013. He has no periods of unemployment.¹

Applicant purchased a house in 1996 with his second wife. Applicant attributed his financial problems to being a single parent and his 2009 divorce. His wife worked and helped pay the family expenses. When they divorced he no longer had her salary to help. He testified that he was trying to do too much and his bills became overwhelming. His son was in private school and he lost control over his finances. He stopped paying his mortgage in about 2010. He continued to live in the house for about five to six months until it was foreclosed. The debt in SOR ¶ 1.d is Applicant's first mortgage that was foreclosed. He believed this debt was satisfied when the house was foreclosed. He did not provide documentary evidence to confirm there is no deficiency owed on the mortgage after the sale. The debts reflected in the SOR are supported by credit reports from April 2015 and September 2013. The debt in SOR ¶ 1.f is for a second mortgage that is reflected in his credit reports as charged off and disputed. Applicant acknowledged he obtained a loan for a second mortgage. He could not remember any specific facts about either of the debts. He did not provide information or documentation about the status of these debts. Both debts are unresolved.²

The debt in SOR ¶ 1.e (\$571) is for a credit card. Applicant used the account a couple of years ago, and he stopped making payments. He plans on paying it in the future, but he is not in a position to do so now.³

¹ Tr. 17-29, 32; GE 1. Applicant's security clearance application reflects different dates for when Applicant married and divorced. It only reflects two marriages and does not reflect the marriage where his wife passed away. I have used the dates based on Applicant's testimony.

² Tr. 26-38; GE 2, 3.

³ Tr. 38-40.

The debt in SOR ¶ 1.g (\$11,224) is a line of credit Applicant obtained in about 2009. A judgment was entered in 2011. Approximately a year ago Applicant's pay was garnished, and he testified that he has been paying \$200 a month that is withdrawn directly from his paycheck. He provided a copy of his earning statement to show the garnishment payment.⁴

The debt in SOR ¶ 1.h (\$189) is a collection account for a home-security system. Applicant indicated the debt has been owed since the house was foreclosed. It is not paid.⁵

In November 2015, Applicant had a serious medical condition and was unable to work until March 2016. This impacted his finances. He intends to find a second job once his health improves and will use the money to pay his debts.⁶

Applicant's son was in a private elementary school and the tuition was \$600 a month. He later attended private high school and the tuition increased to \$800 a month. His son graduated in May 2016 and is now attending college. Applicant is paying his college tuition. He recently paid \$4,000 and another bill for \$2,000 will be due in December 2016. He explained that in the past, he obtained the tuition money from family and friends. To pay his son's tuition, he manages his finances by paying other bills late and then pays the late fees to catch-up payments on the delinquent bills. He does this with his rent, car loan, and other bills. This is how he intends to pay the upcoming tuition bill. He testified that his son does not qualify for financial aid based on Applicant's current income. He is hoping his son can get a work-study job.⁷

Applicant filed Chapter 13 bankruptcy in April 2013. It was dismissed in July 2013. He filed Chapter 7 bankruptcy in May 2013. It was dismissed in August 2013. He filed Chapter 13 bankruptcy in November 2013. It was dismissed in April 2014. Applicant testified the reason for the dismissals was because he could not afford to pay the bankruptcy fees.⁸

Applicant disclosed that he owes back taxes to the IRS for tax year 2013. He testified the reason he has a tax debt is because his tax preparer did them wrong. He was advised by the IRS that he owed additional taxes. He has a monthly installment agreement and pays \$35 a month. The balance owed is unknown. He acknowledged he has a large balance he owes on his cell phone and he is attempting to pay it down.⁹

⁴ Tr. 40-45; GE 2, 3; AE A.

⁵ Tr. 45.

⁶ Tr. 22-24, 47, 61.

⁷ Tr. 29-32, 61-63; GE 2, 3.

⁸ Tr. 46, 63-64.

⁹ Tr. 52-53, 57-60. This information is not considered for disqualifying purposes, but may be considered when analyzing Applicant's credibility, in mitigation, and the whole person.

Applicant acknowledged that since 2009 he made poor financial decisions. He plans to be more aware of his finances in the future and promises to “make things right.”¹⁰ He acknowledged he needs to attend financial counseling, but has not. He has no savings.¹¹

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 overarching adjudicative goal is a fair, impartial and commonsense 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.”

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 to obtain 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

¹⁰ Tr. 65.

¹¹ Tr. 37, 55, 60-61, 64.

grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations is set out in AG ¶ 18:

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 classified 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 classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹²

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has delinquent debts that he is unable or unwilling to satisfy. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;

¹² See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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;

(d) the individual initiated 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.

AG ¶ 20(a) does not apply because Applicant has numerous debts that are not resolved. Applicant attributes his financial problems to a period when he and his wife divorced and he lost her income in 2009. In November 2015, he had a medical incident and was unable to work until March 2016. These conditions were beyond his control. To fully apply AG ¶ 20(b), Applicant must have acted responsibly. Applicant did not provide evidence of actions he took to resolve his delinquent debts from 2009 to 2015 when he developed medical problems. He indicated his home was foreclosed, but it is unknown if there is a deficiency owed. He has not addressed the second mortgage or other delinquent debts owed, except for a judgment that is being garnished from his wages. Applicant has not provided sufficient evidence to show he acted responsibly. AG ¶ 20(b) partially applies.

Applicant has not received financial counseling. He delays paying some of his monthly expenses, so he can pay his son's tuition. He did not provide sufficient information to conclude there are clear indications his financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. Applicant's wages are being garnished to pay the judgment in SOR ¶ 1.g. This is not a good-faith effort to repay a creditor. AG ¶ 20(d) does not apply. Applicant does not believe he owes the mortgage loan on his foreclosed house, but did not provide documentary evidence to support his claim. AG ¶ 20(e) does not apply.

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant attributed his financial problems to his 2009 divorce. He did not provide sufficient evidence of actions he has taken since then. He then developed a medical problem in 2015 that caused him to miss work for several months. In the past, Applicant intentionally delayed paying monthly expenses so he could pay his son's private school tuition. He has a college tuition payment due in December 2016 for his son and intends to do the same. He hopes to get a second job in the future to help his financial situation. At this time, Applicant does not have a credible financial track record. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the financial considerations trustworthiness concerns.

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
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Subparagraphs 1.a-1.h:	Against Applicant
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Conclusion

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

Carol G. Ricciardello
Administrative Judge