



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



In the matter of:)	
)	
[REDACTED])	ADP Case No. 15-03900
)	
Applicant for Public Trust Position)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2017

Decision

MARINE, Gina L., Administrative Judge:

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on August 15, 2014. On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant 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); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.¹

Applicant answered the SOR on April 12, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on June 6, 2016. On June 7, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant (including documents identified as Items 1 through 5),

¹ ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) ("The Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.")

who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 8, 2016, and did not respond. Items 1 and 2 are the pleadings in the case. Items 3 through 5 are admitted into evidence. The case was assigned to me on May 18, 2017.

Findings of Fact²

Applicant is 51 years old, and has at least one child.³ He and his wife of almost nine years divorced in 2009. He honorably served as an active reservist in the Army National Guard from 1983 through 1988. He received a bachelor of arts degree in 1992.

He has been employed full time by his current employer since July 2014. He was unemployed from April 2011 through January 2012 following a layoff from his employer of eight years. During an unspecified period, Applicant received unemployment compensation.⁴

Applicant admits to the six alleged debts totaling \$32,778, which are also corroborated by credit reports.⁵ His debts include four judgments, totaling \$28,569, granted in 2010, 2011, 2013, and 2015 (SOR ¶¶ 1.a through 1.d) and two accounts, totaling \$4,209, placed for collection in 2011 and 2013 (SOR ¶¶ 1.e and 1.f). In his SOR answer, Applicant attributes these debts to unemployment, divorce, and obligations for child support and alimony.

In his SOR answer, Applicant averred that his wages are being garnished to satisfy his child-support obligation, the judgment alleged in SOR ¶ 1.d, and a judgment in favor of the same creditor alleged in SOR ¶ 1.e.⁶ He also claimed that the debts alleged in SOR ¶¶ 1.a and 1.c relate to the same debt, as do the debts alleged in SOR ¶¶ 1.b and 1.e. Not only did Applicant not provide any corroborating documentation, but the credit reports do not contain sufficient information to support these claims.⁷

² I extracted these facts from Applicant's answer to the SOR (Item 1) and the e-QIP (Item 2), unless otherwise indicated by citation to another item in the record.

³ Although Applicant did not report any children on his e-QIP, he references a child-support obligation therein and in his SOR answer.

⁴ The record does not address this issue directly, but in his SOR answer, Applicant references having money from unemployment.

⁵ Items 4 and 5.

⁶ Although the creditors are the same, there are no facts in the record to prove that this judgment is for the same debt alleged in SOR ¶ 1.e. Therefore, I consider it an additional debt not alleged in the SOR and will consider it for purposes of mitigation only.

⁷ Items 4 and 5. I considered that the creditor who sold the debt to the collection agency alleged in SOR 1.b is different from the creditor alleged in SOR 1.c. I also considered that the same creditor to whom the judgment was granted in SOR ¶ 1.b charged off an account in an amount that is only \$10 off from the high credit noted by the collection agency alleged in SOR ¶ 1.e.

Applicant accrued child-support arrearages of approximately \$10,000 when he lost his job in 2011. He is now current with his child-support obligation, and has satisfied his alimony obligation. The amounts of his current child-support and previous alimony obligations were not disclosed in the record.

Applicant intends to address his delinquent debts when his “pressing issues” are resolved. In addition, he claims that he is “beginning to get back on [his] feet” and should “soon” be able to address his debt. However, Applicant does not provide any specific details about his income history or “pressing issues,” or any specifics concerning the financial impact that his layoff, divorce, support obligations, or other past or present circumstances have had on his ability to pay his delinquent debt.

The record contains no evidence that Applicant has either sought or received any credit counseling. In the FORM, Department Counsel advised Applicant that he failed to provide any documentary evidence to support the assertions outlined in his answer to the SOR. Applicant did not respond to the FORM.

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. 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.⁸

When evaluating an applicant’s eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG.⁹ These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position.¹⁰ 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.” The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

⁸ Directive, § 3.2.

⁹ Directive, Enclosure 2.

¹⁰ Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

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 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 concern under this guideline 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

Applicant's admissions, corroborated by his credit bureau reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of the above mitigating conditions apply. AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved.

AG ¶ 20(b) is not established. While Applicant's unemployment and divorce were circumstances beyond his control, he failed to meet his burden to show that he acted responsibly in light of those circumstances to resolve his delinquent debts.

AG ¶¶ 20(c) and 20(d) are not established. Applicant has not received any financial counseling and his debts remain unresolved. Accordingly, his financial problems are not under control. Although Applicant is credited with resolving his child-support arrearage, a non-SOR debt, it does not suffice to support a good-faith effort to resolve the delinquent debts alleged in the SOR. Applicant has not provided any documentation to show that any of his debts are being resolved through garnishment or otherwise. Moreover, resolution of debt via garnishment would not constitute good-faith effort.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors AG ¶ 2(a). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by his financial indebtedness. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for a public trust position.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.f: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Gina L. Marine
Administrative Judge