



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)

ADP Case No. 15-04471

Appearances

For Government: Pamela Benson, Department Counsel
For Applicant: *Pro se*

08/30/2016

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the trustworthiness concerns raised under the guideline for financial considerations. Eligibility for access to ADP I/II/III sensitive information is granted.

Statement of the Case

On October 8, 2014, Applicant submitted a Public Trust Position Application (SF 85P) for re-investigation. On November 23, 2015, 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); 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.

Applicant answered the SOR in writing on December 22, 2015 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 21, 2016, and issued a Notice of Hearing on June 13, 2016. I convened the hearing as scheduled on July 11, 2016. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence.

Applicant testified and offered Applicant Exhibits (AE) A through L into evidence. All exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 21, 2016. The record remained open until August 5, 2016, to give Applicant an opportunity to submit other exhibits. He timely submitted exhibits that I marked as Applicant's Exhibits (AE) M and N, and entered into the record without objection.

Findings of Fact

In his Answer, Applicant admitted the allegations contained in SOR: ¶¶ 1.a, 1.d, 1.h, 1.i, and 1.j. He denied the remaining five allegations with explanations.

Applicant is 39 years old and married for 11 years. He and his wife have two children, ages 9 and 11. His stepson is 19 years old. Applicant has two years of college. (Tr. 20.) His wife works as a nursing assistant. He volunteers as a football coach for his children, and works as an assistant basketball coach for a community boys' team. He has worked for his employer since 2004, and held a position of trust since 2005. (Tr. 20-22, 31.) In addition to full-time employment, he has owned and operated a cleaning business since 2004. (Tr. 23.)

Applicant's history of financial difficulties began in 2009 after his wife was in an automobile accident that damaged their car beyond repair. In 2010 she experienced health problems which affected her ability to work, and required Applicant to stay home with the family without being paid. (Tr. 24-25.) In 2012 his financial situation began to slowly improve, and today it is stable. (Tr. 26-27.)

Based on credit bureau reports (CBR) from October 2014 and February 2016, the SOR alleged 10 delinquent debts totaling \$20,410, which accumulated between 2009 and 2013. The status of each debt is as follows:

SOR ¶ 1.a: The \$14,770 judgment is for an unpaid home equity loan Applicant assumed in 2010 and became delinquent in 2012. As of the end of July 2016, the balance is about \$5,200. It is being resolved through a garnishment of monthly payments of \$185. (Tr. 40-42; AE L, AE M.)

SOR ¶ 1.b: The \$753 state tax lien that was entered against Applicant in July 2005 was paid and released in August 2005. (AE D.)

SOR ¶ 1.c: The \$394 debt for car repairs was settled for \$194 and paid in July 2016. (AE E.)

SOR ¶ 1.d: The \$2,652 delinquent balance on Applicant's \$147,500 mortgage is resolved. The original mortgage, which became delinquent, was transferred to another mortgagor and became current in August 2015. (Tr. 46-47; GE 3.)

SOR ¶ 1.e: The \$766 hospital debt was satisfied through a judgment that was released on December 31, 2014.¹ (AE F.)

SOR ¶ 1.f: The \$291 medical debt is incorporated into the above judgment. (Tr. 47-49; AE G.)

SOR ¶ 1.g: The \$236 debt was paid in May 2016. It was a cable box that had not been returned to the company. (Tr. 50-51; AE H.)

SOR ¶ 1.h: The \$222 medical debt was paid in July 2016. (AE I.)

SOR ¶ 1.i: The \$212 medical debt was paid in March 2016. (AE J.)

SOR ¶ 1.j: The \$114 medical debt was paid in March 2016. (AE J.)

Applicant provided a copy of his budget. He and his wife have a net monthly income of \$4,420 and expenses of \$4,274. In August 2016 his expenses will decrease to \$3,780 because he will have paid some obligations. (AE C.)

Applicant testified candidly and forthrightly. He presented his case in a detailed and organized manner. He submitted his recent performance evaluation. He fully meets his employer's expectations. (AE N.)

Policies

Positions designated as ADP I, II, and III are classified as "sensitive positions." (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." (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. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the 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, which are to be used in evaluating an applicant's eligibility for access to sensitive information.

¹ The Order of Satisfaction was entered on December 31, 2014. The creditor posted the payment in its record on January 22, 2015. The two exhibits related to these two debts contain the same court docket number. (AE F, AE G.)

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 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 states that, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying 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 protected 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

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.²

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.

Applicant accumulated delinquent debts between 2009 and 2013, which he had been unable or unwilling to satisfy. The evidence raises both of the above trustworthiness 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.

The ten delinquent debts alleged in the SOR are resolved or being resolved. There is sufficient information to demonstrate that Applicant's financial problems are unlikely to continue or recur, and do not call into question his reliability and trustworthiness. The evidence establishes some mitigation under AG ¶ 20(a).

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant provided evidence that his financial problems arose as a consequence of his wife's automobile accident, her loss of work, her subsequent medical issues, and his need to care for his family during those times when he did not have adequate income to manage expenses. Those circumstances were beyond his control. However, in order to merit full mitigation under AG ¶ 20(b), Applicant needed to provide evidence that he acted responsibly under the circumstances. In this instance, many of the delinquent debts were not resolved until recently, and the delinquent home equity loan is being paid through a garnishment. Hence, the evidence does not establish full mitigation under AG ¶ 20(b).

Applicant did not present evidence that he participated in credit counseling. However, he produced evidence that his delinquent debts and finances are under control. He submitted a budget that accommodates his obligations. Although he paid or resolved some of the alleged debts recently, he provided evidence to demonstrate that he has been making good-faith efforts to manage his debts. He established some mitigation under AG ¶ 20(c) and AG ¶ 20(d).

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent 39-year-old man, who has successfully worked for his employer since 2004 and held a position of trust since 2005. He owns a business that he has operated for over ten years. He is active in his children's sports and a boys' basketball team. From 2009 to 2013 he accumulated several delinquent debts, which totaled \$20,410. Eight of those are paid; one is being paid; and the mortgage is current. While Applicant could have, in all probability, resolved some of them sooner, he resolved the 2005 tax lien a month after it was entered, and resolved his mortgage in August 2015. At this time he has resolved all SOR allegations, and demonstrated by his organized presentation and exhibits that he understands the importance of maintaining financial stability.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, the record evidence leaves me without doubt as to Applicant's eligibility and suitability for a position of trust. For these reasons, I conclude that Applicant mitigated the trustworthiness concerns arising under the guideline for financial considerations.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.n:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to continue Applicant's eligibility for a public trust position. Eligibility for access to ADP I/II/III sensitive information is granted.

Shari Dam
Administrative Judge