



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



In the matter of:

Applicant for Public Trust Position

)
)
)
)
)
)

ADP Case No. 15-05388

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

09/20/2016

Decision

DAM, Shari, Administrative Judge:

Between 2009 and 2013, Applicant accumulated 11 delinquent debts, 8 of which he has resolved. He mitigated the trustworthiness concerns raised under the financial considerations' guideline. His eligibility for a public trust position is granted.

Statement of Case

On November 14, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On March 9, 2016, Applicant answered the SOR in writing (AR) and requested a hearing before an administrative judge. On May 2, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On June 13, 2016, DOHA issued a Notice of Hearing setting the case for July 12, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified, and offered Applicant Exhibits (AE) A through O into evidence. All exhibits were admitted without objections. The record remained open until August 2, 2016, to give Applicant an opportunity to submit additional evidence. He subsequently submitted three exhibits, which I marked as Applicant Exhibits (AE) P through R and admitted into evidence without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on July 22, 2016.

Findings of Fact

The SOR contains 11 allegations of delinquent debts. In his response to the SOR, Applicant denied all allegations, except those alleged in SOR ¶¶ 1.e, 1.h, and 1.i. He denied the debts on the basis that they were paid. (AR.) His admissions are incorporated into these findings of facts.

Applicant is 31 years old and married. He has three children, a six-year old from a previous relationship; a four-year old stepchild; and a one-year old with his wife. He provides child support for his six-year-old child. Applicant has some college credits and certifications in information technology. He began working for his employer in September 2014. Prior to this position, he worked at a hospital in a medical unit. Since April 2010 he has been a volunteer firefighter. In April 2015 he started a part-time position as a 911 call dispatcher. (Tr. 17- 22.)

Applicant said his financial problems began in 2009 when he was in a relationship with woman who is the mother of his eldest child. They were living together and he did not carefully monitor their bills. After he terminated the relationship, he discovered that he was responsible for several outstanding bills that were incurred without his knowledge. Some delinquent medical bills were incurred for services provided to his oldest child, who was born with medical problems. (Tr. 24-26.)

Based on credit bureau reports (CBR), from December 2014 and January 2016, the SOR alleged 11 debts totaling \$17,408. Applicant said they became delinquent between 2009 and 2013. (Tr. 26; GE 2, GE 3.) The status of each debt is as follows:

The four educational loans referenced in SOR ¶¶ 1.a (\$3,936); 1.b (\$3,271); 1.c (\$2,932); and 1.d (\$3,210) are resolved and paid. The loans listed in ¶¶ 1.c, and 1.d are duplicates of ¶¶ 1.a and 1.b. Applicant's father gave him \$7,056 in September 2015 to resolve them. He does not need to repay his father. (Tr. 35-36; AE N.)

The \$2,673 medical debt alleged in SOR ¶ 1.e is owed to a hospital and is unresolved. Applicant will begin making payments when he has paid other debts. This is

his bill, which he incurred after an accident. He did not have insurance at the time. He intends to pay this debt. (Tr. 37-38.)

The \$392 debt alleged in SOR ¶ 1.f was owed to an apartment complex. Applicant paid it in March 2015. (Tr. 40; AE L.)

The \$275 utility debt alleged in SOR ¶ 1.g was paid in March 2015. (Tr. 41; AE G.)

Appellant disputed the \$230 medical debt alleged in SOR ¶ 1.h. He said it is not his debt, but belongs to his oldest child's mother and is in her name. He called the hospital about the problem, in an attempt to resolve it. He received a confirmation number for the dispute, but does not have a resolution. He would like her to pay it. (Tr. 43; AE J.)

The \$177 medical debt alleged in SOR ¶ 1.i is owed to a children's hospital and is unresolved. Applicant intends to pay it after he completes payments on other bills, as money becomes available. (Tr. 44.)

The \$164 utility debt alleged in SOR ¶ 1.j was paid in February 2016. (Tr. 45; AE H.)

The \$148 cell phone debt alleged in SOR ¶ 1.k was paid in March 2016. (Tr. 45; AE M.)

At this time two of the 11 alleged debts remain unpaid or unresolved: SOR ¶ 1.e for \$2,673 and SOR ¶ 1.g for \$275. Applicant denies owing the \$230 debt in SOR ¶ 1.h.

Applicant's salary is \$43,867. He earns about \$200 a week from his part-time job as a dispatcher. He pays child support of \$148 biweekly. (Tr. 29-30, 33.) He submitted a detailed budget. His net monthly income is \$3,000 and his expenses are \$2,900, leaving a small amount of money remaining. (AE O.)

Applicant's supervisor is aware of this hearing and the underlying financial issues. He helped Applicant prepare his presentation. (Tr. 21.) Applicant submitted letters of recommendation. His supervisor wrote that he has known Applicant for two years and "found him to reliable and on a positive trajectory as it relates to his behavior and work ethic." (AE D.) A former chief of police who worked with Applicant in the county 911 dispatch center stated Applicant "is a dedicated and informed employee . . . and is a trusted . . . employee." (AE A.) The deputy director of the 911 center praised Applicant's responsible and trustworthy character. (AE B.)

Policies

Positions designated as ADP I, ADP II, and ADP III are classified as "sensitive positions." (See DoD 5200.2-R ¶¶ 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 the DoD and 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. (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 Adjudicative Guidelines (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 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 (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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies 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 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.

Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or 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 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 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.¹

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.

From 2009 to 2013, Applicant accumulated delinquent debts that he had been unable or unwilling to satisfy until 2015. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five 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

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

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;

(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.

Applicant's debts arose between 2009 and 2013. Given his actions to resolve 8 of the 11 debts, and his intention to resolve the two remaining debts that are his, it is unlikely that similar delinquencies will recur, such that his previous problems do not cast doubt on his trustworthiness. The evidence supports the application of AG ¶ 20(a).

Applicant provided evidence that his financial problems arose from medical and relationship issues. Those problems were circumstances beyond his control. In order to merit full application of AG ¶ 20(b), he needed to provide evidence that he acted responsibly under the circumstances. Applicant did not submit sufficient evidence that he attempted to address the problems while they were arising, thus AG ¶ 20(b) has limited application.

Applicant did not provide evidence that he participated in credit or financial counseling, but he did submit a detailed budget and evidence that he resolved most of the debts. He testified that he intends to address the two remaining delinquent debts, as money becomes available. There are sufficient indications that his financial problems are slowly coming under control through his good-faith efforts to pay and resolve the delinquent bills. Both AG ¶ 20(c) and AG ¶ 20(d) provide mitigation. There is evidence that Applicant disputed the delinquent medical debt belonging to his former girlfriend, but there is no documentation as to the outcome of that dispute. The evidence establishes partial mitigation under AG ¶ 20(e).

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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant is a 31-year-old hardworking man. He testified credibly and with knowledge of his financial issues. He has successfully worked for his employer since September 2014 and gained his supervisor's recommendation. In 2009 he began experiencing financial problems, which he has been unable to fully resolve as a result of insufficient income. At this time he has addressed \$14,328 of the \$17,408 alleged SOR debt. Although he has lacked sufficient financial resources to address all debts, he has made reasonable efforts to resolve them slowly. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.²

Applicant has been paying the debts as monies have become available, and there is no evidence in the record that would lead me to conclude he will not continue to resolve the remaining debts. He is aware of the potential negative implications future financial delinquencies could have on his employment. Overall, the record evidence does not leave me with questions as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from his delinquent debts.

² ISCR Case No. 07-06483 at 2-3 (App. Bd. May 21, 208) (internal citations and quotation marks omitted).

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.k: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

SHARI DAM
Administrative Judge