



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



In the matter of:

ADP Case No. 15-08833

Applicant for Public Trust Position

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

08/30/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under *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 (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

On July 30, 2016, Applicant submitted an answer to the SOR, and he elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on September 11, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence, which are identified as Items 1 through 4. Applicant did not submit any documents or additional information. The Government's documents are admitted into evidence. The case was assigned to me on August 10, 2017.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.c, and 1.h. He denied the allegation in ¶¶ 1.b, 1.d, 1.e, 1.f, 1.g, 1.i, and 1.j. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 50 years old. He is a college graduate. He married in 2001 and has four children, ages 13, 10, 8, and 6 years old. He has worked for his present employer, as a subcontractor, since October 2014.²

The SOR alleged that Applicant has ten delinquent debts totaling approximately \$37,600 that are charged off, past-due or in collection status. He attributed his financial problems to traveling frequently; having four children in school with extra-curricular activities; and car repairs. He stated in answer to the SOR that in 2011 his father became sick and Applicant took time off from work to help. He said he lost his job in June 2011 because of his absences from work. He received unemployment benefits and did not find employment until October 2011.

In his security clearance application (SCA), Applicant disclosed that he worked for the same employer from May 2009 to July 2012, when he was terminated due to unsatisfactory attendance. He also disclosed on SCA that he was also unemployed from March to April 2013 and December 2012 to January 2013.³

Applicant stated in his SOR answer that after he began working in October 2011, he enrolled in a debt reduction/elimination program in December 2011. He said through this program he has been diligently negotiating with his creditors to repay delinquent debts. He stated he was 90 days from completing the program. He is no longer using credit cards.⁴

As part of his answer, Applicant provided a document, presumably from his bank that shows from January 2014 through May 2016, a recurring transaction occurred in

² Items 1, 2, 3.

³ Item 2.

⁴ Item 1.

the amount of \$650. It does identify the creditor or nature of the transaction. He also provided a list of “paid settlements.” This list was unsubstantiated and could not be verified against the debts alleged in the SOR. No documents from creditors or other reliable sources were provided to show the debts were paid, settled, or resolved.⁵

In October 2015, Applicant was interviewed by a government investigator, and he disclosed that he received financial counseling and was enrolled in a debt reduction program since September 2012 and he was paying \$695 a month. He provided a list of accounts that were in the program, including the accounts in SOR ¶¶ 1.b, 1.d, 1.f, 1.g, and 1.j. He told the investigator that he was unfamiliar with the account in SOR ¶ 1.e. He disclosed on his SCA and admitted in his SOR answer the debt in SOR ¶ 1.h (\$6,257). It is not part of the debt reduction plan. He also acknowledged to the investigator that he owed the debts in SOR ¶¶ 1.a (\$262) and 1.c (\$410), but had not made arrangements to pay them. The debt in SOR ¶ 1.i (\$2,528) debt was not addressed during the interview.⁶

In the Government’s FORM, written in bold, it stated: “At this juncture, Applicant has not provided written documentation that sufficiently shows payment toward the debts specified in the SOR.” Applicant did not provide documentation of the debt reduction plan; the date of its inception; proof of consistent payments from 2011 or 2012 as he stated; or proof any of the SOR debts are paid, settled, or resolved. A March 2015 credit report lists the debts alleged in the SOR.⁷

Policies

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.

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.

⁵ Item 1.

⁶ Items 1, 2, 3.

⁷ FORM at page 2, Item 4.

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.”

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and

(c) a history of not meeting financial obligations.

Applicant has delinquent debts that began accumulating in 2011 that he is unable or unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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 stated in his answer to the SOR that he has been addressing some of the debts alleged in the SOR. He did not submit evidence documenting payments or resolution of those debts since 2011. He did not provide information about the other debts in the SOR. Applicant's debts are unresolved and his financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems in 2011 to traveling; having four children; car repairs; and loss of employment when he was terminated due to absences from work. He stated he took time off from work to care for his father who was ill. While traveling, children, and car repairs may have been circumstances beyond his control, his termination from employment was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant stated he has been working with a debt reduction company since 2011 or 2012 and has been

negotiating settlements for his delinquent debts. However, he did not provide documentary evidence to verify his statement. In addition, not all of his debts were included in the payment plan he established. He did not provide any information about those debts that were not included in the plan. AG ¶ 20(b) partially applies.

Applicant stated he received financial counseling and was addressing some of his delinquent debts through a debt reduction plan; however, he failed to provide proof of that plan or payments made into it. I have insufficient reliable evidence to conclude any of the alleged debts are paid or resolved, or that his financial problems are under control. AG ¶ 20(c) partially applies. There is insufficient evidence to apply AG ¶¶ 20(d) or 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(d):

- (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 is a 50-year-old college educated person. He experienced financial problems in 2011. He indicated he has been participating in a debt reduction plan since then, but failed to provide substantive documentary evidence to verify his statements. Applicant's conduct raises questions and doubts about his eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the Guideline F, 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

Subparagraphs 1.a-1.j: Against Applicant

Conclusion

In light of all of the circumstances, 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.

Carol G. Ricciardello
Administrative Judge