



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



In the matter of:

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ADP Case No: 16-01026

Applicant for Public Trust Position

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2017

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the trustworthiness concerns raised under the guideline for financial considerations, related to delinquent debts and unfiled state tax returns. Eligibility for a public trust position is granted.

Statement of the Case

On September 3, 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on September 27, 2016, and requested a hearing before an administrative judge. On October 27, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On that same date, DOHA issued a Notice of Hearing setting the case for November 17, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A, and 1 through 7 into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on November 29, 2016.

Findings of Fact

Applicant admitted the facts alleged in SOR ¶¶ 1.a through 1.d, and denied the facts alleged in SOR ¶¶ 1.e through 1.g, on the basis that he paid or resolved those debts. All admissions are incorporated herein. (Answer.)

Applicant is 31 years old and unmarried. He attended college, but did not finish a degree. He started with his employer, a defense contractor, in November 2015. His supervisor is aware of this hearing and the financial issues underlying it. From 2006 to 2015, Applicant worked for a national delivery service. While attending school, he worked there part-time. (Tr. 13-16; GE 2.)

In September 2015, Applicant completed an application for a position of trust (SF-85P). In it, he disclosed that he had failed to file state income tax returns for 2009, 2010, 2011, and 2012. He stated, "I procrastinated in filing and was worried about doing so later." (GE 1.) While testifying, he said that from 2009 to 2012 he was suffering from depression and feeling overwhelmed with his life. He was in college and had to go home every weekend because his mother was experiencing serious medical and emotional issues. His grandmother died at one point during this period. He admitted he was also consuming too much alcohol. He was 24 years old when these problems arose. (Tr. 19; GE 1.) Applicant said that these personal problems contributed to his financial difficulties, including his failure to file state income tax returns. (Tr. 22.)

Based on credit bureau reports (CBR) from October 2015 and October 2016, and information from Applicant's SF 85P, the SOR alleged that he failed to timely file state income tax returns for four years and had three delinquent debts. (GE 1, GE 3, and GE 4.) The allegations arose between 2009 and 2012. A summary of the status of each debt is as follows:

SOR ¶ 1.a: Applicant filed his 2009 state income tax return on September 28, 2016 and included a payment of \$262. It is resolved. (Tr. 19; AE A, AE 4.)

SOR ¶ 1.b: Applicant filed his 2010 state income tax return on September 28, 2016, and included a payment of \$238. It is resolved. (Tr. 19; AE A, AE 5.)

SOR ¶ 1.c: Applicant filed his 2011 state income tax return on September 28, 2016, and included a payment of \$238. It is resolved. (Tr. 19; AE A, AE 6.)

SOR ¶ 1.d: Applicant filed his 2012 state income tax return on September 28, 2016, and included a payment of \$206. It is resolved. (Tr. 19; AE A, AE 7.)

SOR ¶ 1.e: The 2010 judgment for \$377 arose from an unpaid medical debt, which was not covered by insurance. Applicant paid the creditor \$457 in August 2016. It is resolved. (Tr. 18; AE 3.)

SOR ¶ 1.f: The \$86 utility bill was paid in October 2015. Applicant was unaware of it until he had a background interview in 2015. It is resolved. (Tr. 18; AE 2.)

SOR ¶ 1.g: The \$49 cable bill was paid in October 2015. Applicant was unaware of it until he had a background interview in 2015. It is resolved. (Tr. 18; AE 1.)

Applicant said that he timely filed his state income tax returns for 2013, 2014, and 2015. He did not owe any money for those years. He timely filed his Federal income tax returns for 2009 through 2015. He does not owe any money to the Internal Revenue Service. (Tr. 20-21.)

Applicant's annual salary is \$50,000. He does not have a budget but uses an excel spreadsheet for bills. He recently started making contributions to a 401(k) and has \$6,000 in it. He has also saved about \$15,000. (Tr. 16-17.)

Applicant testified remorsefully and credibly. He took responsibility for his mistakes. He clearly understands the importance of timely filing tax returns and does not intend to let a similar situation occur in the future. Although Applicant acknowledged a previous gap in treatment for his depression, he continues to consistently address it with medical assistance. (Tr. 22-23; GE 2.) He wants to achieve financial stability. (Tr. 26.)

Policies

When evaluating an applicant's suitability for a public trust position the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to sensitive information.

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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 who seeks a position of public trust 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 a public trust position. 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:

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.

AG ¶ 19 notes three disqualifying conditions that could potentially raise trustworthiness concerns in this case:

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

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

As documented by CBRs and his admissions, Applicant began experiencing financial problems between 2009 and 2012 that he had been unable or unwilling to resolve, including failing to file state income tax returns. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those three disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the trustworthiness concerns. AG ¶ 20 sets forth conditions that could potentially mitigate the financial trustworthiness concerns in this case:

(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.

Although all of the SOR allegations are resolved, Applicant's tax problems were not fully resolved until mid-2016. Hence, the evidence does not establish full mitigation under AG ¶ 20(a). Applicant's financial problems are attributable to personal issues he encountered for several years while attending college. They included his mother's medical and emotional conditions, his grandmother's death, and Applicant's depression. Those factors were circumstances beyond his control. There is insufficient evidence to conclude that he attempted to responsibly manage his debts or tax obligations during the years that they arose. Hence, AG ¶ 20(b) has only partial application.

Applicant provided evidence to support the application of AG ¶ 20(c). Although he has not participated in credit or financial counseling, there are clear indications that Applicant's financial and tax issues are under control, as all matters alleged in the SOR are resolved and he uses a spreadsheet to manage his bills. He paid the three delinquent debts listed in the SOR prior to the issuance of the SOR, exhibiting a good-faith effort to resolve those debts and establish mitigation under 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 all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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) 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 include 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 facts and circumstances surrounding this case. Applicant is a credible and honest 31-year-old man, who has worked for a defense contractor since 2015. Between 2009 and 2012, he encountered serious personal problems that interfered with his ability to fulfill his legal obligation to file state income tax returns. He disclosed those omissions in the SF-85P that he submitted. Without hesitation, Applicant took responsibility for his past conduct and expressed his intention not to allow a similar situation to recur. Although he failed to file state tax returns for four years, he timely filed all Federal income tax returns from 2009 through 2015, and all state returns from 2013 through 2015. Applicant's financial situation is stable and he has savings for unexpected exigencies. Applicant demonstrated that he has matured and understands his legal responsibility to file state tax returns. He is aware that further financial problems could jeopardize his position of trust and employment. The evidence leaves me without questions as to Applicant's eligibility and suitability for a public position of trust. For these reasons, I conclude Applicant mitigated the trustworthiness concerns arising under the financial considerations guideline.

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:

FOR APPLICANT

Subparagraphs 1.a through 1.g:

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