



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-07288

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

03/30/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the trustworthiness concerns under Guideline F, financial considerations and Guideline J, criminal conduct. Applicant's eligibility for access to sensitive information is granted.

Statement of the Case

On May 25, 2016, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations and Guideline J, criminal conduct. The DOD CAF acted the 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*, dated January 1987, as amended (Regulation); and the adjudicative guidelines effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 20, 2016. He requested a hearing before an administrative judge. I was assigned to the case on September 28, 2016. A notice of hearing was issued on December 12, 2016, setting the hearing for January 10, 2017. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without any objection. Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through D, which were admitted into evidence without any objections. The record was left open for submission of additional evidence. Applicant timely submitted AE E through J, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on January 19, 2017.

Findings of Fact

The SOR alleges 11 delinquent debts totaling about \$21,058. Applicant admitted all the debts except for ¶ 1.g, which he denied. He further explained that the admitted debts were either paid or he was making payments on them. The SOR also alleged four criminal offenses arising out of his driving on a suspended license, speeding, and two failure to appear charges. He admitted those allegations and explained they were all resolved. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following additional findings of fact.

Applicant is 30 years old. He recently married for the second time. He was married to his first wife from 2006 to 2013. He has a child (age 7) from his first marriage for whom he pays child support. He also pays alimony to his ex-wife. Since 2013, he has been a senior data analyst for a defense contractor. He was unemployed between January and May 2013. He is several credits short of attaining his bachelor's degree, which he expects to achieve in September 2017. He served in the Marine Corps for eight years, from 2005 to 2013. He deployed four times to combat locations. He earned several decorations during his deployments, including two Navy Achievement Medals with combat valor devices. Upon his discharge in 2013, he was diagnosed with Post-Traumatic Stress Disorder (PTSD). It was during this time that he also went through his divorce from his first wife.¹

After Applicant was discharged from the Marine Corps in 2013, he experienced some difficulty returning to civilian life. As stated above, he was diagnosed with PTSD and eventually received a 50 per cent disability rating from the VA. He was prescribed medication for PTSD, which he continues to take. It was during this time that he received speeding tickets, and when he could not pay them, he failed to make required court appearances. His finances were stretched at the time because he was ordered to pay alimony to his ex-wife. He admitted this was a bad time in his life. In 2015 and early 2016, he paid the traffic tickets and took care of the outstanding warrants for failure to appear. He received a valid driver's license in September 2016. He has had no

¹ Tr. at 6, 18-19, 29, 47, 57; GE 1.

additional speeding, driving with a suspended license, or failure to appear offenses since then.²

Applicant's emotional state after separating from the Marine Corps also affected his finances. Two judgments were entered against him for failure to pay rent, and both were satisfied in 2014. (SOR ¶¶ 1.a and 1.b) He provided documentation showing that he paid six of the nine remaining SOR debts. (SOR ¶¶ 1.e, 1.f, 1.h through 1.k). He disputes the debt at SOR ¶ 1.g. As for the unresolved two remaining debts, the first was a joint credit card with his ex-wife. He contacted the collection company holding the account and arranged a payment plan. He has yet to make a payment, choosing to pay his other debts first. (SOR 1.c) The second unpaid debt is for a personal loan to make vehicle repairs. He became delinquent on this account and it was charged off. He contacted the collection company holding the account post-hearing and arranged a payment plan. He provided documentation of his contact, but he has not documented a payment yet. Concerning the disputed debt, Applicant stated he paid the debt. It no longer appears on the two most recent credit reports. It is resolved. (SOR 1.d) He also documented payments on two non-SOR debts.³

Applicant presented a budget showing that he and his wife have approximately \$1,350 of disposable income at the end of each month. He is current on his child support and alimony. He has about \$5,200 in a retirement fund. He sold his car to help pay for some of his delinquent debts. All of his current obligations are in good standing.⁴

Applicant presented two character letters from his current supervisor and from a Marine Corps colleague. Both write in support of Applicant's integrity, honesty, and ethical behavior.⁵

Policies

When evaluating an applicant's suitability for a trustworthiness determination, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

² Tr. at 21-23; AE B, C, K.

³ Tr. at 25-28, 30-31, 33-35, 37-41; GE 3, 4; AE D, G, I, K.

⁴ Tr. at 41, 44-45, 49-50, 56; AE F, H.

⁵ AE A.

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.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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 that an applicant may deliberately or inadvertently fail to 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 concern for financial considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated multiple debts, which he was unable to pay. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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 individuals 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.

Several factors affected Applicant's financial well-being during 2013. They included going through a divorce, leaving the Marine Corps, and his PTSD diagnosis. While the debts are recent, he has made significant strides to rehabilitate his financial affairs. His financial distress occurred under circumstances that are unlikely to recur. Additionally, Applicant presented sufficient evidence to establish his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Two of the circumstances referred to above (divorce and PTSD diagnosis), were circumstances beyond Applicant's control. He acted responsibly when he satisfied the outstanding judgments, paid six of the delinquent debts, and contacted the collection companies for the remaining two debts. AG ¶ 20(b) applies.

Applicant has either paid or made payment arrangements for all his delinquent accounts, except for the debt he disputes. Most importantly, the two judgments have been addressed. The remaining two unresolved accounts are in settlement discussions and he has shown positive efforts towards resolving these as well. Both AG ¶¶ 20(c) and 20(d) apply. Applicant's dispute of SOR ¶ 1.g as a valid debt is supported by the debts absence on two recent credit reports. AG ¶ 20(e) applies.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise trustworthiness concerns and may be disqualifying in this case. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

In 2013 and 2014, Applicant was arrested for failure to appear, driving on a suspended license, and speeding charges. I find that both disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant went through a difficult period in his life after his Marine Corps discharge. He admitted not addressing his personal issues as he should have. Once he received assistance from the VA for PTSD, he began addressing his problems. He paid all the fines associated with the above charges and had his driver's license reinstated. He has not had any further criminal or driving offenses since those listed in the SOR,

which is over two years. Now that Applicant has his PTSD under control, recurrence of similar behavior is unlikely. He successfully rehabilitated his behavior. His past actions did not affect his overall trustworthiness, reliability, and good judgment. Both AG ¶¶ 32(a) and 32(d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a sensitive position by considering the totality of the applicant's conduct and all the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust 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 considered Applicant's military service and the personal issues he faced upon his discharge. I also considered the circumstances by which he fell behind in his finances and incurred criminal charges, and the efforts he has made to recover since then. Applicant's evidence is sufficient to mitigate the trustworthiness concerns in this case.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising under Guideline F, financial considerations and Guideline J, criminal conduct,

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-1.k:	For Applicant

Paragraph 2, Guideline J:

FOR APPLICANT

Subparagraphs 2.a-2.d:

For Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge