



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



In the matter of:)
)
) ADP Case No. 15-07882
)
Applicant for Public Trust Position)

Appearances

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

10/06/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 9, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).¹

Applicant answered the SOR on July 7, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on August 17, 2016. The evidence

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the old AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

included in the FORM is identified as Items 2-4 (Item 1 includes pleadings and transmittal information). The FORM was mailed to Applicant, who received it on November 10, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections and did not submit any evidence. Items 2-4 are admitted into evidence without objection. The case was assigned to me on October 1, 2017.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 36-year-old employee of a federal contractor. He has worked for this employer since January 2015. He is a security analyst. From 2011 to 2014, he worked as a senior network administrator in the private sector. He was unemployed from May 2010 to February 2011. He obtained a master's degree in 2014. He is married and has two children. He served on active duty in the Army from 1998 to 2003 and was honorably discharged.²

The SOR alleges Applicant: failed to timely file his 2013-2014 federal and state income tax returns (SOR ¶ 1.a); and had an unpaid judgment in the amount of \$3,518 entered against him in 2014 (SOR ¶ 1.b). The allegations are supported by admissions in his January 2015 trustworthiness application, a credit report from March 2015, his answers to questions from a defense investigator in April 2015, and admissions in his SOR answer.³

In his SOR answer, Applicant attributed his failure to file his federal and state tax returns for 2013-2014 to "hardship." He never explained what the specific hardship was other than to state that he was a full-time graduate student who was working a full-time job, trying to care for his family, and purchase a home. He claimed he filed his 2013 and 2014 federal and state tax returns in April or May 2016, but he did not supply documentation supporting this assertion. His tax issues remain unresolved.⁴

Applicant provided documentation showing that he paid the judgment in April 2016 by submitting a cashier's check for the entire balance owed. This debt is resolved.⁵

Applicant did not provide any information about his current financial situation or a budget. I note that the credit report in evidence shows numerous student loan accounts.

² Item 3.

³ Items 1-4.

⁴ Items 1-2, 4.

⁵ Item 1.

Several are in a payment status, however, 11 accounts are currently deferred. The cumulative amount owed on those deferred student loan accounts is \$39,972. There is no evidence of financial counseling.⁶

Policies

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(a), 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 national security eligibility 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. Under Directive ¶ E3.1.15, 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 as to obtaining 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 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.

⁶ Item 1-4.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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 trustworthiness concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred a judgment in 2014 that remained unpaid until 2016. He failed to file his federal and state income tax returns for years 2013-2014. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant resolved his judgment by paying the full balance in April 2016. AG ¶ 20(d) applies to SOR ¶ 1.b. The record contains no documentation supporting his assertion that he filed his 2013-2014 federal and state tax returns. There is also no documentary evidence supporting any arrangements or contacts he may have had with the IRS concerning this tax issue. AG ¶ 20(g) is not applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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 access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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(d) were addressed under that guideline, but some warrant additional comment.

I considered his military service and personal circumstances. Even though Applicant paid the judgment amount two years after it was entered against him, he failed to document filing at least two years' worth of federal and state income tax returns. He has not established a meaningful track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge