



[NAME REDACT]

ADP Case No. 15-07979

Applicant for Position of Trust

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/03/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not present sufficient information to mitigate the trustworthiness concerns raised by his financial problems. He also did not mitigate the concerns raised after he deliberately gave false answers to questions about his finances. His request for eligibility to occupy a position of trust is denied.

Statement of the Case

On June 2, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (E-QIP) to obtain eligibility for an ADP I/II/III position¹ for his job with a defense contractor. After reviewing the results of the ensuing background investigation, DOD adjudicators were unable to determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.²

On April 7, 2016, DOD issued Applicant a Statement of Reasons (SOR) alleging facts which raise trustworthiness concerns addressed through the adjudicative

¹ As defined in Chapter 3 and Appendix 10 of DOD Regulation 5200.2-R, as amended (Regulation).

² Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

guidelines (AG)³ for financial considerations (Guideline F) and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on June 6, 2016, and I convened a hearing on August 10, 2016. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4.⁴ Gx. 1 - 3 were admitted without objection, but I excluded *sua sponte* the credit report proffered as Gx. 4 for reasons stated during the hearing. It is included in the record but I have not considered it. (Tr. 28 - 41) Applicant testified and presented Applicant's Exhibits (Ax.) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 24, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$15,156 for 18 delinquent or past-due debts (SOR 1.a - 1.r). Under Guideline E, the Government alleged that Applicant knowingly and willfully made a false official statement to the Government in his E-QIP when he answered "no" to a question in section 26 (Financial Record: Delinquency Involving Routine Accounts), thereby omitting the debts alleged at SOR 1.a - 1.r (SOR 2.a). Applicant admitted, with explanations, SOR 1.a, 1.b, and 1.k. In response to the remaining allegations, Applicant denied SOR 1.j based on information provided with his Answer. He also denied the debt at SOR 1.r. As to the remaining allegations, Applicant stated, "This debt is not listed on my credit report and I refute this as I have no knowledge of monies owed." (Answer) Based on my review of the pleadings and the documents provided at hearing by the Government and the Applicant, I make the following additional findings of fact.

The E-QIP Applicant submitted in June 2015 was at least the second such application Applicant has submitted for his current position. He also submitted a similar application for a position of trust in 2005. The current E-QIP shows that Applicant did not list any of his debts in response to questions in section 26. Applicant denied the SOR 2.a allegation by saying he did not intend to mislead the Government by his negative response. Instead, he claimed he did not know about the debts because he did not review his credit report before completing the E-QIP. (Answer; Gx. 1; Gx. 2; Tr. 45)

All of the debts alleged under Guideline F are documented in Gx. 3. Applicant's finances were discussed with him during a subject interview by a Government investigator on April 14, 2015. As the investigator reviewed Applicant's E-QIP with him, Applicant affirmed his negative responses in Section 26. Thereafter, the investigator confronted Applicant with the contents of a credit report obtained after Applicant submitted his E-QIP. Applicant was able to provide details about the debts later alleged in the SOR 1.a and 1.b, but he denied knowledge of most of the debts discussed. He went on to state his intention to pull his credit report and contact his creditors to make arrangement for payment or other resolutions. (Answer; Gx. 2; Gx. 3; Tr. 48 - 50)

Applicant is 57 years old. He is employed by a defense contractor in work that requires eligibility for a position of trust. His employer supports management of the health care system used by members of the military, and Applicant might be entrusted with personally identifiable information (PII) associated with the health care system's

³ The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

⁴ Department Counsel also provided a list identifying Gx. 1 - 3. It is included as Hearing Exhibit (Hx.) 1.

constituents. Applicant has held his job since October February 1994, and has held a position of trust at least since about 2004. Written references from co-workers and personal associates show he has a good reputation at work and in the community for trustworthiness, expertise, hard work, and integrity. Applicant also is an honorably discharged military veteran, having served in the Army National Guard between 1986 and 1988. (Gx. 1; Ax. B; Tr. 86 - 88)

Applicant has been married three times. He has four children between the ages of 14 and 34. His most recent marriage ended in divorce in 2014 after a three-year separation. In April 2014, when Applicant was interviewed about his finances during his background investigation, he stated that he was either completely unfamiliar with some of the debts documented in his credit report (Gx. 3) or that he was unaware that debts from his marriage had become delinquent. Applicant generally attributed the debts alleged in the SOR to his ex-wife's poor management of their finances while they were together. In response to the SOR in May 2016, he continued his position that it was his ex-wife's financial mismanagement that was the cause of his financial problems. He also relied on the absence of debts in a May 2016 credit report to support his denials. (Answer; Gx. 1; Gx. 2)

Applicant testified at hearing that around the time he and his ex-wife split up, she won \$100,000 in a lottery. He further testified his ex-wife agreed to pay their debts if he agreed to not pursue any share of her lottery winnings as part of their divorce. Applicant made no mention of his ex-wife's lottery winnings in his subject interview or in response to the SOR. He did not present any documentation of any agreements made as part of their separation or divorce. (Tr. 40 - 41)

At the conclusion of his subject interview in April 2014, Applicant advised that he intended to pull his credit report and contact his creditors to set up payment plans or otherwise resolve the debts attributed to him. The record contains no information showing he did anything to contact his creditors or challenge any of the debts until after the SOR was issued in May 2016. All of his claims as to the status of his debts are based on a credit report he obtained in May 2016. At that time, Applicant also submitted letters to the creditors for SOR 1.a, 1.b, 1.j and 1.n. Additionally, he made online inquiries of his medical insurance company regarding claims submitted by a medical provider in June and September 2013. In response, the insurer identified only one claim of \$95, but did not state whether the claim was paid or if Applicant owed any money from said claim. Applicant's position is that the response to his on-line request shows he does not owe the medical debts at SOR 1.j and 1.n, because they are attributable to medical care provided to his adult son, who is his namesake. (Answer; Ax. A; Tr. 34 - 37, 56 - 58)

The largest of Applicant's debts are the delinquent accounts alleged at SOR 1.a and 1.b and 1.q. Applicant stated the SOR 1.a debt (\$8,409) is for a loan he cosigned with his third wife. He assumed she had paid the debt as he had heard nothing from the creditor since 2008 or 2009. The Government's credit report shows this as an individual, rather than a joint, liability. This debt is solely attributable to Applicant and remains unresolved. The \$1,045 debt at SOR 1.b is listed as a joint account in the Government's credit report. Applicant believes his ex-wife should have paid this debt; however, it remains unresolved. As to the \$1,045 debt at SOR 1.q, Applicant denied this allegation claiming it does not appear on his May 2016 credit report; however, the debt is listed on page 28 of the report he provided with his Answer. It remains unresolved. (Answer; Gx. 2; Gx. 3; Ax. A; Tr. 34 - 38)

In 2015, Applicant's adult son was injured in a car accident and was unable to support his wife and children. Applicant provided about \$1,000 each month in financial support for about a year. His son is now able to support himself and his family without Applicant's help. Applicant is able to cover his own monthly obligations as required, with about \$600 to \$1,000 remaining after expenses. There is no indication that he has incurred any new past-due or delinquent debts. Applicant files and pays his federal and state income taxes as required. (Answer; Tr. 51, 54, 56 - 58)

Policies

Positions designated as ADP I and II are classified as "sensitive positions."⁵ In deciding whether a person should be assigned to an ADP position, it must be determined that his or her loyalty, reliability, and trustworthiness are such that it is "clearly consistent with the interests of national security" to do so.⁶ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁷

Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁸ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors, commonly referred to as the "whole-person" concept, listed in the guidelines at AG ¶ 2(a).⁹ The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion.

A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

⁵ Regulation, ¶ C3.6.15.

⁶ Regulation, ¶ C6.1.1.1.

⁷ Regulation, ¶ C8.2.1.

⁸ Directive, 6.3.

⁹ (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.

Analysis

Financial Considerations

Available information is sufficient to support the SOR allegations. Applicant also admitted some of the allegations. The record as a whole reflects numerous debts attributable to Applicant that remained unresolved as of this hearing. These facts reasonably raise a trustworthiness concern about Applicant's finances that is addressed, in relevant part, at 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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). I have also considered the following pertinent AG ¶ 20 mitigating conditions:

- (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;
- (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 established that he experienced unforeseen circumstances beyond his control starting in about 2011, when he and his third wife separated. They subsequently divorced in 2014. He averred that his ex-wife was responsible for paying their marital debts; however, his claim is not supported by any objective evidence. Also, it is based on an unsubstantiated claim, made for the first time at hearing, that she was supposed to pay some of the larger debts in the SOR in exchange for his waiver of any claim to her lottery winnings. Applicant was asked about the debts attributable to him in an April 2014 interview with a Government investigator, and stated his intention to look into those debts right after the interview. Yet it was not until after he received the SOR more than a year later that Applicant initiated contact with any of his creditors. Applicants are not expected to be debt free, especially under unusual circumstances. What is

expected, however, is that they act responsibly and make efforts to address their financial problems as best they can under those circumstances. The added financial burden of financially supporting his son in 2015 and 2016 may have prevented Applicant from actually paying some of his debts, but it should not have stopped him from at least making contact with his creditors or seeking assistance where appropriate. The record as a whole shows that Applicant did not address his finances in a timely, productive, or substantive way until after it became clear to him that his ongoing debts might adversely impact his eligibility for a position of trust. AG ¶¶ 20(a), 20(b), and 20(d) do not apply because Applicant did not exhibit good judgment or respond in a prudent way when the debts in his credit history were brought to his attention.

AG ¶ 20(c) is not available because he has not received financial counseling or otherwise demonstrated that his financial problems are under control. Applicant disputes many of his debts simply because they do not appear on his May 2016 credit report. This is not sufficient because he did not establish why, other than the passage of time, they no longer are no longer reported or why they may not be valid. Therefore, AG 20(e) is no applicable here.

The Government met its burden of producing sufficient reliable information to support all of the SOR allegations. In response, Applicant did not meet his burden of producing information that refutes or mitigates the facts established by the Government. On balance, Applicant has not mitigated the trustworthiness concerns about his finances.

Personal Conduct

The trustworthiness concern under this guideline is stated at AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The only pertinent disqualifying condition is at AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied the SOR 2.a allegation that he deliberately withheld adverse information about his finances. Thus, the burden remained with the Government to prove that his E-QIP answers were intended to mislead or deceive.¹⁰ Available information showed that Applicant answered “no” to a question to which he should have answered “yes.”

All other information probative of his intent at the time is derived circumstantially from the entire record. For example, Applicant has completed similar questionnaires to establish his eligibility for a position of trust at other times in his career. He knew or should have known what was expected of him in response to the questions about his

¹⁰ Directive, E3.1.14.

finances, yet he relied on his own failure to obtain a credit report as a rationale for providing false information. Also, Applicant provided conflicting and unsubstantiated information about what he believed were his obligations regarding debts from his third marriage. His failure to mention, until he testified at his hearing, something as unique as his ex-wife's lottery winnings as the basis of his assumption that she paid the largest of his debts undermines his credibility. I conclude from all of the available information that Applicant knew he had delinquencies for which he was responsible when he completed the E-QIP. His failure to list at least the debts at SOR 1.a and 1.b shows that he intended to conceal the true scope of his financial problems. AG ¶ 16(a) applies.

By contrast, I have considered the following AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

AG ¶ 17(a) does not apply. During his April 2015 interview, Applicant affirmed his answers in the E-QIP before being confronted with the contents of his credit report. In his testimony, Applicant persisted in his claim that he was unaware of the presence of delinquent debts that should have been reported in his E-QIP. AG ¶ 17(b) does not apply because Applicant did not rely on anyone's advice about his obligations in answering the E-QIP, and he was already familiar with the type of financial questions put to him through the E-QIP. He knew or should have known that one or more of those questions required an affirmative answer, even if he did not know all of the details regarding his debts. Applicant has not mitigated the trustworthiness concerns under this guideline.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guidelines E and F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is well-regarded in the workplace and in his community. He is a veteran and written references laud him for his work ethic and integrity. Although this positive information reflects well on Applicant's character, his failure to take timely action regarding his debts, and his apparently deliberate attempt to conceal his debts from the Government leave me with unresolved doubts about his suitability for a position of public trust. Because protection of the interests of national security is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings 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.r:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is denied.

MATTHEW E. MALONE
Administrative Judge