



**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. 15-08475

Appearances

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

01/26/2017

Decision

DAM, Shari, Administrative Judge:

Applicant's financial problems began in 2005 and continue to the present, despite having discharged a large amount of delinquent debt through a 2016 Chapter 7 bankruptcy. He failed to present sufficient evidence to mitigate the financial trustworthiness concerns. Eligibility for a public trust position is denied.

Statement of the Case

On June 16, 2015, Applicant submitted a public trust position application (SF 85P). On May 16, 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 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 15, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on September 29, 2016, and issued a Notice of Hearing the same day. I convened the hearing as scheduled on October 19, 2016. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A and B into evidence. All exhibits

were admitted without objections. DOHA received the transcript of the hearing (Tr.) on November 3, 2016. The record remained open until November 18, 2016, to give Applicant an opportunity to submit other exhibits. He subsequently submitted a document, consisting of 82 pages, which I marked as AE C and admitted into evidence without objection from Department Counsel.

Findings of Fact

Applicant denied all 13 allegations in the SOR, on the basis that those debts were resolved through Chapter 7 bankruptcy in June 2016.

Applicant is 41 years old and has been married to his third wife since 2006. He and his wife have three children, ages nine, six, and one month. He has an 18-year-old child from his first marriage. He has an associate's degree. He began his current position with a defense contractor in 2012. He has been employed full-time since at least 2008. (Tr. 18-23.)

The SOR alleged 13 unpaid debts, totaling \$15,897. Applicant stated that his financial problems began during his first marriage from 1997 to 2001. (Tr. 18.) Applicant said, "I never resolved those issues, and my subsequent marriages, essentially the bills just snowballed [sic]." (Tr. 21.) He acknowledged that he "was a poor manager of money" and that he overspent at times. (Tr. 33.)

In or about March 2016 Applicant and his wife filed a Chapter 7 bankruptcy petition. Prior to filing it, they completed a required financial counseling course. (Tr. 25.) In June 2016 the court discharged \$212,741 of delinquent debts, which included judgments, credit card accounts, utility bills, medical bills, attorney's bills, and other miscellaneous service bills. The debts arose between 2005 and 2015. The discharged debts included all of the SOR-listed debts, except the student loans alleged in ¶ 1.c (\$2,657) and ¶ 1.d (\$2,355), and another debt listed in ¶ 1.g (\$1,942). The bankruptcy documents listed unpaid state taxes for 2002 and 2006 totaling \$5,328. (AE C.)

Applicant said that the two private student loans mentioned above, totaling \$5,012, have been consolidated into one loan. In order to place them into a deferred status so that he can return to college, Applicant started making a monthly payment of \$1 three months ago. He must make that payment for another two or three months. He previously made nine monthly payments of \$5 to remove them from a default status. Applicant's federal student loans total over \$53,000. They have been in a deferred status since he left school in 2012. He has never made a payment on those loans. (Tr. 29-31; GE 3.)

Applicant did not know how much debt his wife has in student loans, or the cost of her graduate program. He thought her loans were deferred because she was starting school again. (Tr. 35.) Post-hearing, he submitted a document indicating that she owes \$79,000 in student loans and has additional projected graduate loans of \$30,000. (AE C.)

According to a September 2016 credit bureau report (CBR), Applicant's \$149,884 mortgage had a past-due amount of \$2,758 for two months of late payments. (GE 3.) He said that he did not have money to make the payments because he had other bills to pay that were not included in the bankruptcy. He borrowed \$6,000 from his 401(k) to pay those bills. At the time of the hearing, he had not made the October mortgage payment, which was due on October 1, 2016.¹ (Tr. 32-33.)

Applicant's annual salary is \$71,000. He thinks his wife's salary is \$20,000 or \$30,000. They have no savings. According to an August 2016 budget, his family monthly income, including his wife's income, is \$4,596. Their monthly expenses are \$5,048. (AE A.) That budget included a monthly payment of \$500 toward private student loans, which he said he would not be making because they will be deferred. (Tr. 25, 36.) The monthly budget he submitted with his bankruptcy petition in March 2016 recorded a monthly income of \$5,114 and expenses of \$5,411. That budget noted that his federal student loans were deferred. (AE C.)

Applicant intends to resume college to finish a bachelor's degree. He will take out a \$2,500 student loan for tuition, which will be reimbursed by his employer. His wife is soon beginning graduate school and will work part-time, rather than full-time. He thinks that after he and his wife complete their degrees they will earn more money and be better able to address their bills. He recently started driving his car for a national taxi service. (Tr. 34, 35.)

Applicant's supervisor is aware of this proceeding, but not the financial trustworthiness concerns underlying it. Applicant said that he has received satisfactory and outstanding performance reviews. (Tr. 24.)

Policies

Positions designated as ADP I, II, and III are classified as "sensitive positions." (Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (Regulation ¶ C6.1.1.1.) 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. (Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

¹This past-due mortgage is not alleged in the SOR and will not be considered in an analysis of disqualifying conditions. It may, however, be considered in an analysis of credibility, mitigating conditions, and the whole-person concept.

disqualifying conditions and mitigating conditions, which are to be used 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 applicable guidelines in the context 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 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. Directive ¶ E3.1.15 states that, "[t]he 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 applying for access to sensitive information seeks to enter 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 protected 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.²

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Applicant has a history of not meeting his financial obligations, which began in 2005 and continued into 2015, as reflected in the numerous delinquent debts included in his June 2016 Chapter 7 bankruptcy discharge. The evidence raises both of the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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.

Applicant's delinquent debts are ongoing, as evidenced by his recent unpaid mortgage and outstanding SOR-listed debts. His budget does not provide any money

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

for additional debts or emergencies. The evidence does not establish mitigation under AG ¶ 20(a). There is evidence that some of the financial problems are attributable to marital issues, which may have been circumstances beyond his control. However, he admitted that he has not responsibly handled his financial obligations since his first marriage. He did not produce evidence to demonstrate that he attempted to manage his debts while they were accumulating, which proof is necessary to establish full mitigation under AG ¶ 20(b).

There is evidence that Applicant participated in financial counseling as a requirement for filing the 2016 bankruptcy. However, his budget does not demonstrate that his financial problems are under control. In fact, his unpaid mortgage became delinquent after his 2016 bankruptcy discharge. The evidence establishes minimal mitigation under AG ¶ 20(c). Applicant provided evidence that he recently resolved 10 of the 13 alleged debts through the June 2016 bankruptcy. The remaining two private student loans will soon be out of default status and placed in deferment. The \$1,942 debt alleged in SOR ¶ 1.g is unresolved. Applicant did not establish mitigation under AG ¶ 20(d), because he did not present evidence that he made a good-faith effort to pay or resolve any of the SOR-alleged debts prior to filing bankruptcy.³

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent, 41-year-old man, who has been employed since 2008 and with his current employer since 2012. In June 2016 he discharged over \$212,000 of delinquent debts in Chapter 7 bankruptcy. Subsequently, his mortgage became delinquent. At this time, he owes over \$53,000 in federal student loans, and another \$5,000 in private loans. Those loans are

³Bankruptcy is a lawful means of debt resolution, but is neither intended, nor serves, to demonstrate a good-faith effort to resolve past-due debts when employed to resolve financial trustworthiness concerns while applying for a position of trust.

deferred as he returns to school. He and his wife owe over \$5,000 in unpaid state taxes. His wife owes over \$79,000 in student loans, which are deferred as she returns to school. He presented insufficient evidence to show that his financial situation will not continue to deteriorate, to support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation or a track record of responsible financial management. At the hearing, he exhibited a startling lack of knowledge about his family's finances and obligations. He is a mature and experienced individual who is accountable for his choices and financial problems.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, the record evidence leaves me with doubt as to Applicant's eligibility and suitability for a position of trust. For these reasons, I conclude that Applicant did not mitigate the trustworthiness concerns arising under the guideline for financial considerations.

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
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Subparagraphs 1.a through 1.m:	Against Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to ADP sensitive information is denied.

Shari Dam
Administrative Judge