



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



In the matter of:

Applicant for Public Trust Position

ADP Case No. 15-02679

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

11/30/2017

Decision

BENSON, Pamela, C., Administrative Judge:

Applicant mitigated the trustworthiness concerns arising under Guideline F, financial considerations. National Security eligibility for access to sensitive information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on December 20, 2012. On December 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued on or after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on February 9, 2017, and elected to have his case decided on the written record in lieu of a hearing. On March 16, 2017, Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on April 10, 2017. The Government's evidence is identified as Items 1 through 8. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Hence, all Items were admitted into evidence. The case was assigned to me on September 26, 2017.

Findings of Fact

Applicant admitted the allegations cited as SOR ¶¶ 1.a through 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:²

Applicant is a 61-year-old Information Technology (IT) manager employed by a healthcare government contractor since December 2009. He earned a high school diploma in June 1974. He was self-employed from September 2003 through December 2009, at which time he sold his share of the business to his business partner. He was married to his first wife for approximately seven years and divorced in 2001. He married his current spouse in 2012 and has two adult step children. He is applying for a position of trust.

Applicant listed on his 2012 e-QIP that he failed to pay the Internal Revenue Service (IRS) for tax years 2007 and 2008. He estimated owing a total of \$1,329 in unpaid taxes and claimed that he was working with the IRS to arrange a payment plan. He also disclosed that he had failed to file and pay Federal income tax returns for tax years 2010 and 2011. He estimated owing a total of \$1,200 for these tax years, and claimed that he was working with an accountant to file the proper tax forms. He disclosed that the reason for not filing his tax returns was due to "bookkeeping and financial issues."³

Applicant had been issued Interrogatories by the Defense Office of Hearings and Appeals, and he responded to the Interrogatories in October 2016. The Interrogatories also included a copy of Applicant's background interview conducted in January 2013 with an authorized DOD investigator. In that report, Applicant stated that he experienced financial difficulties with his business after the housing market collapsed beginning in 2007. Due to the loss of income, he did not have enough money to pay taxes in 2007

² Item 1, 2.

³ Item 3, 8.

and 2008. In addition, due to being self-employed, he was unable to pay for an accountant to prepare the complicated tax returns for subsequent tax years.

Applicant admitted that all of his required tax forms had been filed as of October 17, 2016. He attached Federal tax transcripts for tax years 2007 through 2015. As of that date, he owed the IRS approximately \$1,191, and owed the state approximately \$448. It was his intention to resolve all of his tax debt through continuous payments. SOR ¶¶ 1.a through 1.c. He had not been contacted by any creditor regarding his credit card debt, and stated that he intended to have this adverse account removed from his credit report. SOR ¶ 1.d.⁴

Applicant's Answer to the SOR noted that he had paid his state tax debt in full, and had reduced the amount he owed to the IRS for tax year 2015 through regular payments. The only debt cited in the SOR that had not been fully resolved was his unpaid credit card debt (SOR ¶ 1.d/\$808). He disclosed that he had been recently contacted by a collection agency seeking payment for this debt. He listed that he was working with the creditor to resolve this debt.⁵

I have inferred from Applicant's SOR Answer and authenticated background interview that his financial problems stem from a business downturn. The loss of business income caused Applicant to suffer temporary financial hardship until 2009, at which time he sold his portion of the business to his business partner. There is no evidence that he participated in any type of financial counseling. There is also no evidence to indicate that Applicant sought debt consolidation.⁶

Policies

When evaluating an applicant's national security eligibility 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(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.

⁴ Item 8.

⁵ Item 2.

⁶ Item 2.

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 national security eligibility will be resolved in favor of the national security.”

Directive ¶ E3.1.14, requires that 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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F; Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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. . . .

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (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 experienced financial difficulty beginning in at least 2007 after his business suffered in the housing market. He experienced loss of income and was unable to pay his taxes, to hire an accountant to prepare his tax returns, or to pay one credit card account. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following 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 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant began experiencing financial problems following a business downturn, which was a situation beyond his control. He provided Federal tax transcripts as evidence of his actions that he paid Federal taxes and filed his Federal tax returns. He paid his delinquent state tax, and he has continued to pay in accordance with an IRS payment plan for tax year 2015. He stated his intention to pay his credit card debt in the amount of \$808. His financial issues are being resolved. Mitigating conditions AG ¶¶ 20(a), (b) and (d) apply.

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 the 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 a public trust position 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 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.

Applicant failed to timely file Federal tax returns for 2011 and 2012. He failed to pay Federal income taxes due for tax years 2007, 2008, and 2011 through 2015. He owed state taxes in the amount of approximately \$450. He also failed to pay his credit card in the amount of \$808, which was then referred for collection. He shows rehabilitation in that all of his Federal tax returns have been filed and taxes paid for subsequent years. He is paying the IRS on a payment plan for tax year 2015. He stated that it was his intention to pay his credit card account. On the whole, he no longer demonstrates an attitude of disregard or disdain for his legal obligation to file tax returns and pay taxes owed. He has made consistent efforts to resolve his known outstanding Federal and state tax issues.

Applicant provided sufficient evidence to mitigate the financial and tax concerns cited in the SOR. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising under Guideline F, 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:	FOR APPLICANT
Subparagraphs 1.a-1.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's national security eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Pamela C. Benson
Administrative Judge