



**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. 15-06929

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel

For Applicant: *Pro se*

November 2, 2017

Decision

ROSS, Wilford H., Administrative Judge:

On December 30, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 3.) On June 17, 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, 2006.¹ On July 7, 2016, Applicant answered the SOR in writing (Answer) and elected to have his case decided on the written record in lieu of a hearing. (Item 2.) On August 29, 2016, Department Counsel prepared a File of Relevant Material (FORM), which was sent to Applicant on August 30, 2016. Applicant received the FORM on September 15, 2016, and had 30 days from its receipt to file objections and submit additional information.²

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 under either set of guidelines.

² Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of

Applicant elected not to submit additional information. On July 11, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

Applicant is 44 years old and married. He was unemployed from September 2008 to July 2010. In December 2010 he began working for a defense contractor. (Item 3 at Sections 13A and 17.)

The SOR contained 14 allegations under Guideline F, Financial Considerations. The allegations relate to delinquent student loans and consumer debts. Applicant admitted allegations 1.a and 1.c of the SOR. He denied the remaining allegations.

Evidence for the existence of the debts in the SOR is found in credit reports of Applicant dated January 13, 2015; and August 14, 2015. (Items 5 and 6.) Additional evidence can be found in Section 26 of Item 3. The total amount of past-due indebtedness owed by Applicant is alleged to be approximately \$24,500.

1.a. Applicant admitted that he was indebted to a creditor for a past-due student loan in the amount of \$3,811. (Item 6 at 1.) He stated in his Answer, “[C]urrent past due balance is \$2,465. I am currently making payments on the account and my entire IRS refund of \$2,447 has been allocated to payment of the debt.” He attached a statement from the IRS showing the said refund being assigned to this creditor. However, the account number on the statement does not match any of the account numbers for this debt found in Items 5 and 6. No further information was provided. This debt is not resolved.

1.b. Applicant denied that he was indebted to a creditor for a past-due student loan in the amount of \$2,456. (Item 5 at 5; Item 6 at 2.) He stated in his Answer, “[T]his is a duplicate of the original account in item “a” and has been removed from my credit report.” The amount of the debt and Student Number match this allegation and the IRS refund assignment statement attached to Applicant’s Answer. Applicant elected not to submit any documentary evidence to support his statements that all of his SOR-alleged student loan debts are one and the same. Based on the available information, I find this particular debt is being resolved.

1.c. Applicant admitted owing a past-due debt to a utility company in the amount of \$567. (Item 6 at 2.) He stated in his Answer that the current past-due balance was

Applicant conducted by an interviewer from the Office of Personnel Management on June 24, 2015. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant’s admissions and other admissible evidence in the record, it is also cumulative.

\$527 and that he was currently making payments on the account. No further information was provided. This debt is not resolved.

1.d. Applicant denied owing a past-due debt to a cable television provider in the amount of \$467. He stated in his Answer that the debt has been removed from his credit report. Item 6, which is the most recent credit report in the record, shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.e. Applicant denied being indebted to a creditor for a past-due medical debt in the amount of \$180. He stated in his Answer that the debt has been removed from his credit report. Item 6 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.f. Applicant denied owing a past-due debt to a cable television provider in the amount of \$63. He stated in his Answer that the debt has been removed from his credit report. Item 6 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.g. Applicant denied owing \$1,727 for a judgment entered against him in 2009. He stated in his Answer that that debt has been removed from his credit report. Item 6 shows that the judgment was not satisfied as of August 2015. No further information was provided. This debt is not resolved.

1.h. Applicant denied owing \$1,395 for a judgment entered against him in January 2015. He stated in his Answer that that debt has been removed from his credit report. Item 6 shows that the judgment was not satisfied as of August 2015. No further information was provided. This debt is not resolved.

1.i. Applicant denied owing a past-due debt to a creditor in the amount of \$4,194. He stated in his Answer that the debt has been removed from his credit report. Item 5 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.j. Applicant denied that he was indebted to a creditor for a past-due student loan in the amount of \$3,043. (Item 5 at 5.) He stated in his Answer that this was a duplicate of the debt in allegation 1.a. The account number is different from the other two alleged student loans (1.a and 1.b). Applicant elected not to submit any documentary evidence to support his statements that all of his student loan debts are one and the same. Based on the available information, I find this particular debt is not resolved.

1.k. Applicant denied owing a past-due debt to a creditor in the amount of \$1,568. He stated in his Answer that the debt has been removed from his credit report. Item 5 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.l. Applicant denied owing a past-due medical debt to a creditor in the amount of \$555. He stated in his Answer that the debt has been removed from his credit report. Item 5 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.m. Applicant denied owing a past-due debt to a creditor in the amount of \$409. He stated in his Answer that the debt has been removed from his credit report. Item 5 shows this debt as being delinquent. No further information was provided. This debt is not resolved.

1.n. Applicant denied owing \$4,093 for a judgment entered against him in 2015. He stated in his Answer that the debt has been removed from his credit report. This is the same creditor as that in allegation 1.h, above. However, there is no evidence in the record that reflects a judgment in this amount. Accordingly, this allegation is found for Applicant.

Applicant did not provide a workable plan or budget, from which his ability to pay his delinquent debts, or avoid additional debt problems can be predicted with any certainty. He submitted no evidence concerning the quality of his professional performance, or the level of responsibility his duties entail. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

Policies

Positions designated as ADP I/II/III are classified as “sensitive positions.” The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to the DoD and DOHA by the Defense Security Service and Office of Personnel Management. DoD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

When evaluating an applicant’s suitability for national security eligibility for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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(d), describing 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.

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.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable trustworthiness decision.

A person who applies 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 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.

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 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 personal 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 describes three conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable or unwilling to fully satisfy his debts. The evidence raises all three trustworthiness concerns, 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, 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.

The evidence does not support the application of any of these mitigating conditions in this case. Applicant submitted no information that would show how he intended to resolve his debt issues. He states in his Answer that his debts are no longer on his credit report. After receiving the FORM in September 2016, he knew the Government did not have a credit report that supported his statement. In addition, the mere fact that a debt is not found on a credit report is not definitive evidence that it has been paid or resolved. He elected not to respond to the FORM with any other information. There is insufficient information to demonstrate that his financial problems are unlikely to continue or recur, calling into question his reliability and trustworthiness. AG ¶ 20 (a), (c), and (d) do not apply.

With regard to AG ¶ 20(b), Applicant was unemployed for almost two years between 2008 and 2010. However, Applicant submitted no evidence to show that he has behaved responsibly with regard to his debts in the years since he obtained employment. This mitigating condition does not apply to this case.

As stated, allegations 1.b and 1.n are found for Applicant. With those exceptions, Guideline F is found against Applicant.

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 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a trustworthiness determination 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 the facts and circumstances surrounding this case. Applicant failed to submit sufficient information, from which to conclude that his financial obligations are being responsibly managed and that similar problems are unlikely to recur. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant did not meet his burden to mitigate the trustworthiness concerns arising from his financial problems.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge