



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



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| In the matter of: |) | |
| |) | |
| [NAME REDACTED] |) | ADP Case No. 15-07535 |
| |) | |
| Applicant for Public Trust Position |) | |

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2018

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns about his financial problems. Eligibility for access to sensitive information is denied.

Statement of the Case

On May 11, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ Applicant responded to the SOR on June 15, 2016, and he elected a decision on the written record in lieu of a hearing. On July 11, 2016, Department Counsel submitted his file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on August 1, 2016. He was afforded an opportunity to respond within 30 days of its receipt and to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not respond to the FORM. The case was assigned to me on June 2, 2017.

¹ The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on September 1, 2006.

Procedural Issues

On October 26, 2017, I issued an order informing both parties that, although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, I would be applying the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4). I also permitted the parties to supplement the record with additional evidence and argument. Neither party submitted anything further.²

In the FORM, Department Counsel references FORM Items 1-5.³ FORM Items 3-5 are admitted into evidence as Government Exhibits (GE) 3-5, without objection.

Findings of Fact

The SOR alleges financial considerations security concerns based upon Applicant's bankruptcy filing (SOR ¶ 1.a.), two unpaid judgments (SOR ¶¶ 1.b.-1.c.), and nine delinquent debts (SOR ¶¶ 1.d.-1.i.). In his response to the SOR, Applicant admitted all of the allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 42 years old. He earned an associate's degree in October 2000. He has been married since 2003, and he has four children and two stepchildren (ages 8, 12, 13, 17, 18, and 20). Since November 2003, Applicant has had two periods of unemployment – June 2010 to November 2011 and November 2012 to April 2013. Since May 2014, he has been employed full time as an engineer for a DOD contractor.⁴

Applicant's admissions and his April 2015 credit report establish his bankruptcy filing, two unpaid judgments, and nine delinquent debts. In August 2009, Applicant filed a Chapter 7 bankruptcy petition. The dischargeable debts were discharged in December 2009. The two unpaid judgments, totaling approximately \$2,147, were entered against Applicant in September 2010. The nine delinquent debts, totaling approximately \$15,890, became delinquent between January 2010 and February 2015. There is no evidence of any payments or debt-resolution efforts on the unpaid judgments or delinquent debts.⁵

On his March 2015 security clearance application, Applicant attributed his 2009 bankruptcy to a reduction in income and attributed his delinquent debts to his unemployment.⁶

² Administrative Exhibit I includes my order, the attachments, Department Counsel's email acknowledging receipt, and tracking information showing delivery to Applicant's address of record.

³ FORM Items 1 and 2 consist of the SOR and Applicant's answer, which are pleadings and are included in the administrative record.

⁴ GE 3.

⁵ Response to SOR; GE 3; GE 4; GE 5.

⁶ GE 3.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”⁷ The standard that must be met for assignment to sensitive duties is that 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.”⁸ DOD contractor personnel are entitled to the procedural protections in the Directive before any final unfavorable access determination may be made.⁹

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. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.” The Government must present substantial evidence to establish controverted facts alleged in the SOR.¹⁰ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹¹ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹² An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

⁷ Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁸ Regulation ¶ C6.1.1.1.

⁹ Regulation ¶ C8.2.1.

¹⁰ Directive ¶ E3.1.14.

¹¹ Directive ¶ E3.1.15.

¹² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Analysis

Guideline F, Financial Considerations

The security concern 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 risk of having to engage in illegal acts to generate funds. , , ,

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant filed a voluntary petition for Chapter 7 bankruptcy in 2009 due to an inability to satisfy his debts. Since the bankruptcy, he has incurred two unpaid judgments and nine delinquent debts, totaling approximately \$18,037. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 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's debts became delinquent between January 2010 and February 2015. There is no documentary evidence of any debt-resolution efforts or that Applicant has acted responsibly in addressing these debts. Applicant's inactivity on these delinquent debts undercuts his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's periods of unemployment constitute circumstances beyond his control that impaired his ability to satisfy his debts. Nonetheless, he has been gainfully employed full time by a DOD contractor since May 2014, and there is no documentary evidence of any debt-resolution efforts with respect to the alleged debts. Applicant has not demonstrated that he has acted financially responsibly. AG ¶ 20(b) does not apply.

There is no evidence that Applicant has sought credit counseling. Nor is there evidence of his monthly income or expenses to establish that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. There is no documentary evidence of any debt-resolution efforts with respect to the two unpaid judgments and nine delinquent debts. AG ¶ 20(d) does not apply. Applicant bears the burden to demonstrate his financial responsibility. I find that Applicant did not mitigate the financial considerations trustworthiness concerns.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under these guidelines, but some warrant additional comment.

Applicant experienced two periods of unemployment that hindered his ability to satisfy his delinquent debts. Nonetheless, he has been gainfully employed by a DOD contractor since May 2014, and there is no evidence of any debt-resolution efforts or evidence demonstrating financial responsibility. After evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
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| Subparagraphs 1.a.-1.l.: | Against Applicant |
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Conclusion

I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Eric H. Borgstrom
Administrative Judge