



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



In the matter of:

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ADP Case No. 16-00206

Applicant for Public Trust Position

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel

For Applicant: *Pro se*

01/31/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations eligibility concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On August 10, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant eligibility for access to a public trust position. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On September 8, 2016, Applicant answered the SOR, admitting all of the allegations under Paragraph 1 and denying all of the allegations pled under Paragraph 2. The case

was assigned to me on April 7, 2017. On June 1, 2017, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for June 29, 2017. The hearing was held as scheduled. I received five Government exhibits (GE 1 – GE 5), and I considered Applicant's testimony. At the close of the hearing, I left the record open, at Applicant's request, to allow him to submit additional exhibits. He did not submit any exhibits. The transcript (Tr.) was received on July 10, 2017.

While the case was pending a decision, Security Executive Agent Directive 4 was issued establishing national Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG

Findings of Fact

Applicant is a 38-year-old single man with three children, ages 16, 11, and 2. He is a high school graduate who has earned some college credits. He works for a government contractor as a customer service representative. (Tr. 13)

Applicant has eight delinquent debts totaling approximately \$5,900, including a child-support delinquency (subparagraph 1.a), two medical bills (subparagraphs 1.b and 1.c), a delinquency stemming from an unemployment compensation insurance judgment (subparagraph 1.d), two phone bills (subparagraphs 1.e and 1.f), a bill owed to a music club (subparagraph 1.g), and a credit card (subparagraph 1.h). Applicant contends that subparagraph 1.a through 1.c are either satisfied or up to date, but did not provide proof. Subparagraphs 1.d through 1.h remain outstanding. He has no concrete plans to begin resolving the delinquent debts.

Applicant failed to file his 2012 state and federal income tax returns (subparagraphs 1.i and 1.j). To date, he has yet to file them. Applicant attributes his financial problems to an 18-month period of unemployment between 2007 and early 2009. (Tr. 29)

By November 2014, when Applicant completed his Electronic Questionnaire for Investigations Processing (E-QIP), the debts alleged in subparagraphs 1.a through 1.c, and 1.e through 1.f had been assigned to collection agencies, and a judgment had been entered in favor of the creditor alleged in subparagraph 1.d. Applicant did not list these debts on his E-QIP, as required. Applicant contends the omissions were unintentional. He did note his failure to file his income tax returns on the E-QIP, as required.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security. When evaluating an applicant's eligibility for access to sensitive information, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory

explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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)) In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, 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 public trust 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 that the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of sensitive information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns about financial considerations are set forth in AG ¶ 18:

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.

Applicant's outstanding delinquencies and his failure to file his 2012 federal and state income tax returns trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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."

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person 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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Although Applicant's financial problems were caused by a lengthy unemployment between 2007 and 2009, he provided no evidence that he has paid any of his outstanding delinquencies or organized payment plans to begin satisfying them. Most important, he has yet to file his 2012 state or federal income tax returns. AG ¶ 20(b) is partially applicable with respect to circumstances beyond Applicant's control contributing to his financial problems, but none of the remaining mitigating conditions apply.

Guideline E, Personal Conduct

Under this guideline, "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 or sensitive information." (AG ¶ 15) Applicant's responses to questions about his finances on his 2014 E-QIP raise the question whether 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 national security eligibility or trustworthiness, or award fiduciary responsibilities,” applies. Upon reviewing the record, I conclude Applicant’s omissions of financial information from his E-QIP is indicative of neglectful financial management, but not dishonesty. Applicant did not intentionally omit financial information from his 2014 E-QIP. AG ¶ 16(a) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹ I considered the whole-person factors in my evaluation of the Guideline F disqualifying and mitigating conditions, and they do not warrant a favorable conclusion.

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
Subparagraphs 1.a – 1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

¹ The factors under AG ¶ 2(a) are as follows:

(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.

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 clearance. Eligibility for access to sensitive information is denied.

Marc E. Curry
Administrative Judge