



**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. 16-00502

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
David F. Hayes, Esq., Department Counsel¹
For Applicant: *Pro se*

01/11/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is granted.

Statement of the Case

On June 29, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F. Applicant responded to the SOR on August 12, 2016, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on September 7, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on September

¹ Mr. Velvel prepared the file of relevant material (FORM). Mr. Hayes acted on the case after I reopened the record.

29, 2016. As of November 29, 2016, he had not responded. The case was assigned to me on August 8, 2017.

On November 9, 2017, I reopened the record to permit Applicant to submit additional documentary evidence. Applicant responded with documents that I have marked Applicant's Exhibits (AE) A through F. The Government exhibits included in the FORM and AE A through F are admitted in evidence without objection.

Findings of Fact

Applicant is 59 years old. He has worked for his current employer or a predecessor defense contractor since January 2010. He is a high school graduate. He married in 1992 and divorced in 2006. He has lived with a cohabitant since 2009. He had three children, but one of his children died of cancer in 2012.²

Applicant worked as an operator and a supervisor for a company from 1977 until the plant closed in 2004. He worked at another company for about ten months. He worked at another plant as a machine operator from 2005 until that plant also closed in 2009. He found a job in the local area until that contract ended. He was given a choice of transferring to a military hospital six hours away or losing his job. Since 2010, he has left his home at 6:00 on Sunday night and drives the six hours to the hospital's location. He works from Monday through Thursday, and then drives back home.³

Applicant's child and both of his parents passed away within a two-year period. His cohabitant became ill and was unable to work for a few years. With those events and the costs associated with Applicant working six hours away from his home, he was unable to pay all his bills, and a number of debts became delinquent.⁴

The SOR alleges 13 delinquent debts totaling about \$34,000. Applicant admitted owing all the debts with the exception of the debt alleged in SOR ¶ 1.d, which he stated he paid, and the \$124 medical debt alleged in SOR ¶ 1.m. Both debts are listed on a January 2015 credit report, but neither debt is listed on a November 2017 credit report. SOR ¶ 1.h alleges a \$7,498 charged-off debt. The credit reports list the debt as charged off, with a high credit of \$7,498, but with a \$0 balance. The debt is not listed on the January 2016 credit report.⁵

Applicant paid a \$4,000 judgment owed to a credit union in about 2012. He paid a charged-off account, and he settled and paid a collection account in about December

² Items 1, 2; AE B.

³ Items 1, 2; AE B.

⁴ Items 1-5; AE B.

⁵ Items 1-5.

2012. He has been paying back taxes owed to the IRS. None of these debts were alleged in the SOR.⁶

Applicant was diagnosed with an autoimmune disease last year, which cost him time off work and made paying his debts difficult. He stated that he chose not to file bankruptcy or go on disability or Social Security. He wanted to continue working for the next two years, when he will retire. He reported his debts on his 2014 Questionnaire for National Security Positions. He loves his job and working with the patients at the military hospital. He has continued paying his back taxes, and now that he is financially stable, he is committed to paying his remaining delinquent debts.⁷

Applicant submitted letters attesting to his excellent job performance. He is praised for his professionalism, work ethic, dedication, honor, courtesy, honesty, reliability, dependability, positive outlook, responsibility, and integrity.⁸

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 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(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.

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 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

⁶ Items 1-5; AE B.

⁷ Items 1; AE B.

⁸ AE C-F.

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 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.

The guideline notes several conditions that could raise trustworthiness 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 has a history of financial problems, including multiple delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness 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; and

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

Applicant worked at the same job for 27 years until the plant closed in 2004. He lost another job in 2009 after that plant also closed. In 2010, he was given the choice of transferring to a job six hours away or losing still another job. He lost his child and both parents in a two-year span. His cohabitant became ill and was unable to work for a few years. He paid a judgment, paid or settled two debts, and began paying his back taxes, and then he developed an autoimmune disease. He loves his job and wants to continue working for the next two years, when he will retire. He is now financially stable; he has continued paying his back taxes; and he is committed to paying his remaining delinquent debts.

A trustworthiness adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). It may take some time, but I am convinced Applicant will eventually resolve his financial problems.⁹ The above mitigating conditions are applicable.

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.

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.

⁹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

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. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant mitigated the financial considerations trustworthiness concerns.

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
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Subparagraphs 1.a-1.m:	For Applicant
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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 eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Edward W. Loughran
Administrative Judge