



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



In the matter of:)	
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)	
[NAME REDACTED])	ADP Case No. 16-00629
)	
)	
Applicant for Position of Trust)	

Appearances

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

11/17/2017

Decision

MALONE, Matthew E., Administrative Judge:

Available information is not sufficient to mitigate the trustworthiness concerns raised by Applicant's financial problems. His request for eligibility to occupy a position of trust is denied.

Statement of the Case

On April 27, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for an ADP I/II/III position for his job with a defense contractor. After reviewing the results of the ensuing background investigation, DOD adjudicators were unable to determine¹ that it is clearly

¹ Required by DOD Directive 5220.6, as amended (Directive).

consistent with the interests of national security to grant Applicant's request for eligibility to occupy a public trust position.

On August 18, 2016, DOD issued Applicant a Statement of Reasons (SOR) alleging facts that raised trustworthiness concerns under the adjudicative guideline (AG)² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on March 21, 2017, and scheduled the matter for a hearing on May 15, 2017. For reasons stated at hearing,³ I rescheduled this matter for hearing by video teleconference on July 11, 2017. Both parties appeared as scheduled. Department Counsel submitted documents identified as Government Exhibits (Gx.) 1 – 3. Applicant testified and submitted documents identified as Applicant's Exhibits (Ax.) A – C.⁴ I admitted all proffered documents without objection. I received a transcript of the hearing on July 17, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$22,505 for 22 delinquent or past-due debts (SOR 1.a – 1.c, 1.e – 1.v, and 1.x); that in February 2013, he filed a Chapter 13 bankruptcy petition that was dismissed two months later (SOR 1.d); and that he had not yet filed his federal income tax return for the 2011 tax year (SOR 1.w). In response, Applicant admitted SOR 1.a – 1.c, 1.e, 1.f, 1.h – 1.l, 1.r – 1.v, and 1.x. He also provided information showing the debts at SOR 1.a, 1.b, 1.c, 1.e, and 1.k were paid off on various dates between July 2007 and March 2015. He denied the remaining allegations, and claimed by affidavit that he has never had an account with the SOR 1.g and 1.p creditors. In addition to the facts established through Applicant's admissions, I make the following additional findings of fact.

Applicant is 39 years old. Since September 2004, he has worked for a defense contractor in a position that requires eligibility to occupy a public trust position. In June 2015, Applicant moved from State A to State B to take a different position with the same company. His employer has DOD contracts for support of the health care system used by members of the military, and Applicant's duties include safeguarding personally

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. Publication of the DOD Manual 5200.02 did not affect the adjudicative guidelines applicable to this case. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ Tr. 7 – 8.

⁴ In addition to Ax. A – C, the documents Applicant provided with his Answer are included in the record without objection. (Tr. 9 – 10)

identifiable information (PII) associated with the health care system's constituents. (Gx. 1 and 2)

Applicant and his wife have been married since July 2005. He has three children ages 10 to 14, and two stepchildren, ages 18 and 20. Applicant claims some of his debt arose from the medical needs of one of his stepchildren; however, he did not provide any information in support of that claim. Since August 2015, Applicant has held a second full-time job. He is able to do so because his defense contractor job involves work at night. (Answer; Gx. 1; Gx. 2; Ax. A; Tr. 25)

As noted, above, the debts at SOR 1.a, 1.b, 1.c, 1.e, and 1.k have been resolved. Each was resolved through wage garnishments. (Answer; Gx. 2)

At hearing, Department Counsel asked Applicant about the affidavit he supplied with his Answer in support of his denial of SOR 1.g and 1.p. Specifically, Applicant was confronted with the fact that, in his August 2015 interview with a government investigator, he had acknowledged having an account with either the SOR 1.g or 1.g creditors. Applicant conceded at hearing that he did have those accounts, but averred that he disputed the amounts alleged as past due. Applicant denied the debt at SOR 1.o because he believes it was in his wife's name; however, his credit history lists this as an individual account attributable solely to him. (Answer; Gx. 2; Gx. 3; Tr. 33 – 34, 35)

Applicant stated in his 2015 interview and in his testimony that he plans to contact the creditors for the debts at SOR 1.f – 1.j, 1.l – 1.v, and 1.x to negotiate resolution of each debt. As of the hearing, he had not taken any such action. (Answer; Gx. 2; Tr. 32 – 39)

Applicant did not file his 2011 federal income tax return on time due to oversight. With his Answer, he provided a copy of a return he filed in September 2012 after receiving a letter from the IRS. (Answer; Tr. 38)

In August 2016, Applicant contacted a financial counseling company for help in resolving his debts. That company provided him useful information about how to manage his finances and how to address his debts. Applicant did not enroll in a formal program, and he has not provided information that shows he is acting on the guidance he received. (Answer; Tr. 39 - 40)

Applicant attributed his financial problems to a combination of poor decisions and the costs of raising a large family. He also referred to his period of hospitalization in 2014 and his stepson's medical issues as having an adverse impact on his finances; however, he did not provide details about either circumstance. During his August 2015 interview, he acknowledged he could not meet both his current obligations and his past debts. In 2013, he and his wife filed a Chapter 13 bankruptcy petition, but voluntarily withdrew it by mutual agreement with their attorney. No repayment plan was ever established and the bankruptcy court did not dismiss the petition for any compliance failure. (Answer; Gx. 1 – 3; Tr. 24, 32, 41 - 42)

Applicant's wife has been able to return to work since their move to State B in 2015. Together they bring home about \$4,300 monthly. Applicant estimates they have about \$500 remaining after expenses, which do not currently include payments on any of his remaining debts. (Answer; Gx. 2; Ax. A; Tr. 25 – 29)

Applicant has a good reputation at work. His father, a retired military officer, believes Applicant is trustworthy and understands the importance of safeguarding sensitive information. (Ax. B and Ax. C)

Policies

Eligibility for a position of public trust must be based on a determination that it is “clearly consistent with the interests of national security” to do so.⁵ All such adjudications must adhere to the procedural protections in the Directive before any adverse determination is made. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors, commonly referred to as the “whole-person” concept, listed in the guidelines at AG ¶ 2(d).⁷ The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion.

A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her

⁵ Security Executive Agent Directive (SEAD) 4, Appendix A, Paragraph 1(d).

⁶ Directive, 6.3.

⁷ (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.

own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

Analysis

Financial Considerations

Available information was sufficient to support all of the SOR allegations. The facts established by the remaining allegations reasonably raise a trustworthiness concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 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*). Applicant has a history of unpaid debts, most of which remain unresolved. He also did not file his federal income tax return in 2011 as required. By contrast, I also have considered the following AG ¶ 20 mitigating conditions:

(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;

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

(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.

As to Applicant's 2011 income tax return, AG ¶ 20(g) applies because he has filed his return, albeit late. The record does not support, however, any of the other AG ¶ 20 mitigating conditions. Applicant's financial problems are longstanding and continue today. His debts do not appear to result from unusual circumstances, and he has not taken any action to repay them. The debts that have been resolved here were the result of wage garnishment. Applicant has not taken any direct action to resolve any of his debts, and he did not provide a cogent plan for future debt resolution. His brief foray into bankruptcy protection may have been a viable solution, but Applicant decided in short order to abandon that action. Although he contacted a credit counseling firm after receiving the SOR, it does not appear that he has put into action any of the advice they provided. Based on this record, I cannot conclude that Applicant has mitigated the trustworthiness concerns raised by the Government's information.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). The Government does not expect Applicant to be debt-free; however, he is expected to demonstrate that he is dealing responsibly with his financial problems. Absent such information, doubts remain about his suitability for a position of public trust. Because protection of the interests of national security is the principal focus of these adjudications, such doubts must be resolved against granting eligibility.

Formal Findings

Formal findings 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.c, 1.e – 1.v, and 1.x:	Against Applicant
Subparagraphs 1.d and 1.w:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is denied.

MATTHEW E. MALONE
Administrative Judge