



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



In the matter of:

ADP Case No. 16-02315

Applicant for Public Trust Position

Appearances

For Government: Caroline E. Heintzelman, Department Counsel

For Applicant: *Pro se*

01/19/2018

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a public trust position to work in the defense industry. Applicant owed more than \$22,000 on four delinquent student loans and more than \$2,000 on four additional collection accounts. No documentation was presented showing payment on any of the delinquent obligations. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for a public trust position is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a public trust position. Acting under the relevant DoD Directive,¹ the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) on January 7, 2017, detailing financial considerations trustworthiness concerns.

¹ Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On March 14, 2017, Applicant answered the SOR and elected to have the matter decided without a hearing. On April 26, 2017, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained seven attachments (Items). On May 15, 2017, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on June 14, 2017. No additional information was received from Applicant. On October 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.²

Findings of Fact

In Answer to the SOR, Applicant admitted the eight delinquent debts and stated he had been unemployed before obtaining his current job. He asserted he was working to rehabilitate his student loans. He also asserted he had hired a company to "clean up and pay off my debts." (SOR Answer) I incorporate Applicant's admissions as facts. After a thorough review of the pleading and exhibits, I make the following additional findings of fact.

Applicant is 29 years old and is working in system configuration for a defense contractor since June 2013, and seeks to obtain a public trust position. (Item 1) From December 2005 through April 2007, he was unemployed. (Item 3)

In Applicant's December 2015 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he owed approximately \$17,000 on his student loans and had enrolled in a credit repair service. (Item 3) A check with the company indicated Applicant had sought the company's assistance in May 2014, had two meetings with Applicant, and last action occurred in August 2014. The company's employee stated the company does not provide financial counseling or negotiate with creditors on individuals' behalf. (Item 7) The company provides deletion notice service for which they charge \$50 to \$100 for each notice. (Item 7)

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

In 2007, Applicant had obtained approximately \$34,000 in student loans and had made \$200 monthly payments on the loans until January 2010. His mother paid half the student loan debt. He is currently delinquent on student loans of \$22,625. (Items 5 and 6)

Applicant owes four delinquent non-student loans totaling \$2,315. Those four obligations were in the amounts of \$383, \$422, \$628, and \$882 and appear on his January 2016 and April 2017 credit reports. (Items 5 and 6)

No response to the FORM was received from Applicant. He provided no documentation showing payment of any of his delinquent obligations. He did not set forth what efforts he undertook to pay or otherwise resolve his delinquent debts, nor did he provide any documentation as to payment on or current status of his delinquent debts. He provided no documentation showing what the credit repair service did for him, nor did he provide any documentation concerning the rehabilitation of his student loans.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” The standard that must be met for assignment to sensitive duties is that, based on all available information, 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. The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense 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 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.

The protection of sensitive information is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive information] 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.

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 as to obtaining 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 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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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 . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or other questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Applicant owes eight delinquent obligations totaling approximately \$25,000. Disqualifying Conditions AG ¶ 19(a), “inability to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations” apply.

Five of the seven Financial Considerations Mitigating Conditions under AG ¶ 20 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 person 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant provided no documentation establishing that any of the delinquent obligations have been paid. There is no documentation that even the two smallest delinquent obligations of approximately \$400 each have been paid. AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they cannot be considered as behavior that happened long ago. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant provided no information concerning factors beyond his control in recent years that could mitigate his inattention to his delinquent debts. He has been employed by his current employer since June 2013. AG ¶ 20(b) does not apply.

From December 2005 through March 2007, Applicant was unemployed, which is a condition beyond his control. However, that unemployment ended more than ten years ago. He provided no evidence of what responsible steps he took to pay or resolve his debts. The second prong of AG ¶ 20(b) does not apply. He had two meetings with a credit repair company, but failed to provide documented progress on addressing his delinquent accounts.

There is no evidence of financial counseling or clear indications that Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) does not apply.

There is no showing of Applicant having made good-faith payments towards his delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

The mitigating condition listed in AG ¶ 20(e) does not apply. Applicant admits the delinquent obligations. There is no documented proof substantiating the basis of a dispute.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Applicant has been aware of the Government's trustworthiness concerns about his delinquent debts since his February 2016 interview when he was specifically confronted about his delinquent accounts. Additionally, the January 2017 SOR and April 2017 FORM put him on notice of the Government's concern about his delinquent accounts. He provided no information regarding his past efforts to address his delinquent debts, that he has contacted his creditors, or established repayment agreements to address the delinquent debts.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial trustworthiness concerns. He failed to offer evidence of financial counseling or provide sufficient documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only the very limited response in his SOR Answer, financial considerations trustworthiness concerns remain.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a public trust position. (See AG ¶ 2(a)) Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a position of public trust. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from his financial considerations.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a –1.h: Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge