



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



In the matter of:)
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[NAME REDACTED]) ADP Case No. 16-02557
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Applicant for Public Trust Position)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s information is not sufficient to mitigate the trustworthiness concerns raised by his financial problems and failure to timely file his federal and state income tax returns. His request for eligibility to occupy a position of public trust is denied.

Statement of the Case

On October 28, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for public trust position for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators at the Department of Defense Consolidated Adjudications

Facility (DOD CAF) were unable to determine that it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.¹

On April 28, 2016, the DOD CAF issued Applicant a Statement of Reasons (SOR) alleging facts raising trustworthiness concerns addressed through the adjudicative guideline (AG) for financial considerations (Guideline F). At the time the SOR was written, adjudicators applied the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new set of AGs, effective for all security clearance adjudications conducted on or after June 8, 2017. I have based my decision in this case on the June 8, 2017 AGs.²

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On July 19, 2017, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) sent Applicant a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on August 23, 2017, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.⁴ Applicant did not respond to the FORM or enter any objection to it. The record closed on September 22, 2017, and I received the case for decision on January 10, 2018.

Findings of Fact

Under Guideline F, the Government alleged that Applicant did not file or pay his federal and state income taxes as required for tax years 2003 through 2010 (SOR 1.a); that he owes \$17,520 for a federal tax lien entered against him in January 2013 (SOR 1.b); and that he owes \$1,419 (SOR 1.c) and \$756 (SOR 1.e) for state tax liens entered against him in August 2013 and August 2008, respectively. The SOR further alleged that Applicant owes \$3,154 for a child support arrearage placed for collection (SOR 1.d); and that he owes \$5,790 for five other delinquent or past-due debts (SOR 1.f – 1.j). (FORM, Item 1)

In response to the SOR, Applicant admitted, with explanations, all of the SOR debts except SOR 1.e and 1.j. As to SOR 1.e, Applicant averred he was the victim of identity theft by his own brother. He claimed no knowledge of the debt at SOR 1.j. In his e-QIP, Applicant disclosed the information underlying the allegations at SOR 1.a – 1.d, 1.f and 1.g. Department Counsel submitted two credit reports and court records that further document all of the SOR allegations. Additionally, Applicant discussed his debts and his income tax filings with a government investigator in two subject interviews in

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

² My decision in this case would have been the same under either version of the adjudicative guidelines.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on eight enclosed exhibits (Items 1 – 8).

⁴ See Directive, Section E3.1.7.

February 2016. (FORM, Items 2 – 8) In addition to the facts established by the Government's information and by Applicant's admissions, I make the following findings of fact.

Applicant is 44 years old and employed by a defense contractor in a position that requires eligibility for a position of trust. Applicant's employer supports aspects of the health care system used by members of the military, and his duties include safeguarding personally identifiable information (PII) associated with the health care system's constituents. Applicant has worked for his current employer since June 2009. He was unemployed for the three preceding months after losing his job due to a reduction in force. He had worked in the banking industry since at least 2004. Applicant has a good reputation in the workplace for professionalism and reliability. (FORM, Items 2 – 4)

Applicant has three children, ages 10, 17, and 6. The delinquent student loans addressed in SOR 1.f and 1.g were obtained for the education of his oldest child. The debts appear to have been consolidated in another education loan in May 2016, requiring a \$35 monthly payment. Applicant claimed that he is making regular payments and provided an email confirmation of a \$40 payment made to that creditor in June 2017. (FORM, Item 2)

Applicant admitted owing a child support arrearage caused by his period of unemployment. He also claimed he has been making payments through payroll deductions. He did not provide any documents to corroborate his claims in this regard. (FORM, Item 2)

Applicant admitted he did not file his tax returns or pay his taxes between 2003 and 2010. He stated that he followed the advice of a tax preparer in 2003, who told him he did not have to file returns based on his finances at the time. Applicant did not explain why he continued to follow that advice for the next several years. Applicant claims he has resolved his state and federal tax reporting obligations and that he is making regular payments on the tax liens that resulted from his failure to file his returns. The only information he presented to support his claims consists of a money order receipt for a June 2017 payment of \$70 to the pertinent state tax authority. (FORM, Items 2 – 4)

Applicant claimed that the state tax debt alleged at SOR 1.e resulted from acts of identity theft perpetrated by his brother. He also attributed the debt at SOR 1.h to identity theft. Applicant did not present any information that would support his claims in this regard. (FORM, Item 2)

Applicant claimed that he is making, or will be making, payments on the debts at SOR 1.f – 1.i. He did not support his claims with any corroborating information. (FORM, Item 2)

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

Analysis

Financial Considerations

The facts established by this record 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

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.

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*). Available information shows that all of the debts alleged in the SOR are attributed to Applicant. None of those debts has been resolved.

I also have considered the following pertinent AG ¶ 20 mitigating conditions:

(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 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;

(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; 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.

Applicant disputes two of the debts alleged in the SOR as either the result of identity theft by his brother, or as unverifiable. He did not provide any information to corroborate his identity theft claim or to establish he had filed any disputes with creditors or credit reporting companies. Applicant has not sought assistance or counseling from any debt management company or other financial professionals. He also did not show that he has been making payments on any of his debts. The most he has shown is that, in June 2017, he made one payment to his student loan creditor and one payment to a state tax authority. There is no record here of consistent, reliable efforts to pay his past-due debts. Further, Applicant has not posited an acceptable explanation for ignoring his federal and state income tax reporting obligations for seven years. As to unforeseen events or uncontrollable circumstances, the record reflects only that Applicant was unemployed for three months almost nine years ago before he started working for his current employer.

All of the foregoing shows there is no basis on which to apply any of the Guideline F mitigating conditions. Applicant has not mitigated the trustworthiness concerns raised under this guideline.

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). Applicant had the burden of producing sufficient reliable evidence to resolve doubts about his trustworthiness and judgment raised by the Government's information about his finances. He did not meet his burden. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved against the granting of 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.j:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge