



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 17-00953
)	
Applicant for Public Trust Position)	

Appearances

For Government: Nicholas T. Temple, Department Counsel
For Applicant: *Pro se*

04/03/2018

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate concerns raised by his financial situation. Eligibility for a public trust position is denied.

Statement of the Case

On May 9, 2017, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) alleging trustworthiness concerns under the financial considerations guideline. Specifically, the SOR lists 22 delinquent debts, totaling over \$45,000, which includes: about \$8,000 in back child support (1.a), \$18,000 in collections for student loans and unpaid tuition for the associate's degree Applicant earned from an online college in 2014 (1.b – 1. e; 1.h; and 1.i); \$2,600 for tax liens entered against him in 2012 and 2014 (1.o and 1.p); and \$3,000 in unpaid court fines for his drug-related convictions (1.w). The SOR also alleges that Applicant failed to file his 2014 and 2015 federal and state income tax returns (1.v).¹

On August 25, 2017, Applicant answered the SOR, admitting all the SOR allegations. He requested a decision on the administrative (written) record without a hearing. The following month, on or about September 21, 2017, Department Counsel sent Applicant a file of relevant material (FORM). With the FORM, Department Counsel forwarded to Applicant six exhibits, pre-marked as Items 1 – 6, which the Government offers for admission into the record. Applicant received the FORM on October 16, 2017.

¹ See Item 2 (Answer); Item 3 (application for position of trust); Item 6 (November 2016 interview).

(Appellate Exhibit I) He was given 30 days to raise an objection to the material offered by Department Counsel and submit his own evidence. He did not file an objection or submit a response. Accordingly, without objection, Items 1 – 6 are admitted into the record.

On March 16, 2018, I was assigned the case and then received confirmation that Applicant remains sponsored for a position of trust. (Appellate Exhibit II) Accordingly, I have jurisdiction to issue a decision. ISCR Case No. 14-03753 (App. Bd. Sep. 23, 2016).

Findings of Fact

Applicant, 41, has been working full-time for his current employer since October 2011. In April 2016, Applicant submitted an application for a position of trust to support a federal contract. He reported the delinquent student loans and back child support listed on the SOR. He also reported his failure to complete probation for his late 1990's drug-related convictions, which led to the debt listed in SOR 1.w. He sat down for an interview with a government investigator in connection with his application in November 2016. He discussed many of the SOR debts with the investigator, as well as his failure to file his federal and state tax returns. Applicant explained that his financial problems began about 10 years earlier when he and his wife lost their jobs. He has been struggling financially ever since, having lost a home to foreclosure in 2010 when he was unemployed for about eight months. He has been working a part-time job as a fast-food delivery driver since 2013, but is unable to make enough money to pay his delinquent debts. He has considered bankruptcy, but many of his debts are not dischargeable through bankruptcy.

Law, Policies, and Regulations

This case is decided by applying the National Security Adjudicative Guidelines (AG or guidelines), which became effective on June 8, 2017, through Security Executive Agent Directive 4 (SEAD 4), and the due process procedures set forth in DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).²

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.³

² SEAD 4, ¶ E.1 (the current guidelines "shall be used by all authorized adjudicative agencies when rendering a determination for initial or continued eligibility . . . to hold a sensitive position."); Memorandum from the Office of the Deputy Under Secretary of Defense for Counterintelligence and Security, dated November 19, 2004 (the Defense Office of Hearings and Appeals (DOHA) is directed to utilize the provisions of the Directive, to include the current version of the adjudicative guidelines, to resolve contractor cases forwarded to it for a trustworthiness determination).

³ SEAD 4, ¶ E.4; Directive, § 3.2. ADP Case No. 14-00590 (App. Bd. Dec. 10, 2014) ("The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security'".)

When evaluating an applicant's eligibility for a position of trust to support a federal contract, an administrative judge must consider the adjudicative guidelines and whole-person concept. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. See *generally* AG ¶ 2.

The Directive sets forth in Enclosure 3 the due process procedures that must be followed in all DOHA proceedings. Department Counsel must present evidence to establish controverted facts (i.e., SOR allegations denied by the applicant). While an applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate relevant conduct or circumstances that he or she admits or is otherwise established. Directive, ¶¶ E3.1.14; E3.1.25. An applicant has the ultimate burden of persuasion to establish their eligibility for a position of trust. Any doubt raised by the evidence, must be resolved in favor of the national security. See AG ¶ 1(d).

Analysis

Guideline F, Financial Considerations

Applicant's delinquent debt and failure to file his income tax returns raise concerns about his ability to hold a sensitive position. The financial considerations concern is explained at AG ¶ 18:

Failure to . . . 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. . . .

The concern here is not limited to a consideration of whether a person with financial issues might be tempted to compromise sensitive information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt cast doubt upon a person's judgment, self-control, and other qualities essential to protecting sensitive information.⁴

In assessing Applicant's case, I considered the applicable disqualifying and mitigating conditions, including the following:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(f): failure to file or . . . failure to pay annual Federal, state, or local income tax as required;

⁴ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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 . . . and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or 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.

Persons applying for a position of trust are not required to be debt free, or have unblemished financial records, or a certain credit score. However, they are expected to present evidence mitigating concerns raised by delinquent debt. They are also required to show that they manage their personal financial obligations in a manner consistent with the expectations for those granted access to sensitive information.⁵

Here, Applicant did not meet his burden of proof and persuasion. Part of his financial problems may be attributable to unemployment and underemployment. However, his failure to file his income tax returns and a large amount of the delinquent debt at issue are neither related to, nor caused by, these outside matters. Applicant presented no evidence showing he has obtained financial counseling or that he has taken action to address his past-due debts and overdue tax returns. AG ¶¶ 19(a), 19(c), and 19(f) apply. None of the mitigating conditions apply.⁶

⁵ See *generally* ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (“[A]n applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “ . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.”) (internal citations omitted). See *also* ISCR Case No. 15-02585 at 2 (App. Bd. Dec. 20, 2016) (“It is reasonable for Judges to expect applicants to present documentation about the satisfaction of individual debts.”)

⁶ In reaching this adverse conclusion, I considered the whole-person concept, including the honesty Applicant showed in reporting his financial issues on his application and candor he exhibited during the interview. See *generally* AG ¶ 2. However, this and the other favorable record evidence are insufficient to mitigate concerns raised by his financial circumstances. I also considered the exceptions listed in SEAD 4, Appendix C, but none are warranted in this case.

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 (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.w: Against Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Applicant's request for a position of trust is denied.

Francisco Mendez
Administrative Judge