



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



In the matter of:

ADP Case No. 17-01428¹

Applicant for Public Trust Position

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations' trustworthiness concerns. National security eligibility for a position of public trust is granted.

History of Case

On May 24, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F (Financial Considerations). Applicant answered the SOR on June 2, 2017, and requested a hearing (Answer).

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on January 11, 2018. DOHA issued a Notice of Hearing on January 12, 2018, setting the hearing for January 31, 2018. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified and offered Applicant Exhibits (AE) A, and 1 through 10 into evidence. All exhibits were admitted without objections,

¹ This case was mislabeled as ADP Case No. 17-01248.

except GE 2.² After Applicant made non-material corrections to GE 2, it was admitted without further objections. (Tr. 10-13) DOHA received the hearing transcript (Tr.) on February 7, 2018. The record remained open until February 28, 2018, for the submission of additional exhibits. Applicant timely submitted AE 11 through 15, which I admitted without objection.

Findings of Fact

Applicant is 51 years old and has been married for 20 years. He and his wife have three children. Applicant has earned about three and a half-years of college credit. He began working for his current employer in November 2015. He is a senior lead in the healthcare division. Prior to this position, he worked for another employer for 11 years. (Tr. 20)

Applicant attributed his financial problems and delinquent debts to four factors: In 2004, he moved to his present state to care for his sick mother. In 2007, he lost his medical insurance because he could no longer afford the premium. In 2008, his mother died, leaving him debts and expenses related to her care. In 2009, his daughter was diagnosed with a spinal condition that required trips to a medical center in another state, and caused him to incur numerous costs.³ All of these factors created additional expenses and affected his ability to pay routine obligations. (Tr. 24-27)

Based on credit bureau reports (CBR) from January 2018, March 2017, and December 2015, the SOR alleged 16 debts that became delinquent between 2009 and 2015, and totaled \$16,983. Of those, one is an automobile repossession; four are judgments; ten are medical debts; and one debt is owed to a cable company. (GE 3, GE 4, GE 6) The status of each debt is as follows:

The \$7,147 delinquent debt listed in SOR ¶ 1.a is owed to a creditor for an automobile that was repossessed in 2015. Applicant stopped making payments on the debt after his wife was injured at work in 2013 and their income decreased. He intends to pay the debt when he has sufficient money. (Tr. 31-33)

The \$2,894 judgment listed in SOR ¶ 1.b was owed to an apartment complex where Applicant lived. He withheld the last month's rent after he and the company became engaged in a dispute about the condition of the apartment. The company later sued Applicant and the debt was paid through a garnishment. The debt was satisfied in May 2016. (Tr. 34- 35; AE 8)

The \$1,687 judgment listed in SOR ¶ 1.c was owed to a credit card company. Applicant stopped making payments on the account when his daughter began having

² GE 2 is an Enhanced Subject Interview, dated July 28, 2016.

³ Applicant's daughter's was insured through a state insurance policy. That policy covered many medical bills, but not all expenses.

medical issues. A judgment was entered in May 2010 and it was paid through a garnishment in August 2010. (Tr. 35-36; AE 9)

The \$303 judgment listed in SOR ¶ 1.d was owed for a medical debt. The judgment was paid through a garnishment and released in January 2018. (Tr. 36-37; AE 7, AE 15)

The \$3,111 judgment listed in SOR ¶ 1.e was owed to an apartment complex. The judgment was paid through a garnishment and released in January 2018. (Tr. 37-38; AE 16)

The \$236 bill owed to a cable company listed in SOR ¶ 1.f is resolved. Applicant testified that he disputed the debt and it was removed from his CBR. He said the company had billed him at two addresses. He submitted a recent bill indicating that his account is current. (Tr. 39; AE 14)

Applicant disputed the 10 medical debts alleged in SOR ¶¶ 1.g through 1.p with a credit bureau in late 2016 or early 2017. These debts totaled \$1,600 and related to his daughter's care. He never received a response to the disputes. He believes the debts were paid by the state's insurance company, which covered his daughter's care. Applicant emphasized that the medical debts were not old enough to have been removed from his CBR, but were instead resolved. (AE 11) His March 2017 CBR does not contain any of the medical debts, except the \$110 debt alleged in SOR ¶ 1.g, which was later paid. (AE 6) The January 2018 CBR does not reference any of these debts. Neither CBR contain new debts. (Tr. 40; GE 3, GE 6; AE 10) Applicant submitted a printout from his medical provider account that shows all medical bills from August 2016 through July 2017, were paid as of August 2017. (AE 6)

Applicant submitted a budget. His net monthly income is \$5,087 and his expenses are about \$5,407, leaving a shortage some months. Included in his expenses is a \$250 payment to a friend, who loaned him \$2,800 in late 2015. The balance on that loan is \$1,300. He does not owe taxes to the Federal government or state. He has not participated in credit counseling. (Tr. 28-31; AE 1)

Applicant's 2016 annual performance review rated him as an outstanding contributor. His manager noted that he exceeded expectations in his 2017 recommendation for a promotion for Applicant. (AE 4, AE 5)

Policies

The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. 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 classified or sensitive information.

Analysis

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes conditions that could raise trustworthiness concerns. Three may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts between 2010 and 2015, which he was financially unable or unwilling to timely resolve until recently. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

AG ¶ 20 describes conditions that could mitigate the trustworthiness concerns arising from Applicant's alleged financial difficulties. Five may be 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, or 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
- (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.

The 16 SOR-alleged debts accumulated between 2009 and 2015. Applicant's most recent credit report, January 2018, does not list any new debts subsequent to 2015, indicating that in the past three years, he has not accumulated additional delinquent accounts. All but one of those debts has been resolved. The evidence establishes some mitigation under AG ¶ 20(a), as the circumstances that contributed to his financial delinquencies are unlikely to recur and do not cast doubt on his current trustworthiness.

Four unforeseeable circumstances contributed to Applicant's financial delinquencies: caring for his mother and her subsequent death; unanticipated expenses related to his daughter's illness; his wife's injury, resulting in a decrease in her income; and the loss of his medical insurance. Applicant did not provide information that he attempted to responsibly manage his debts until after they had been delinquent for a time, which information is required to establish full mitigation under AG ¶ 20(b).

Applicant has not participated in financial or credit counseling; however, there are indications that his financial delinquencies are coming under control. AG ¶ 20(c) partially applies. The four judgments listed in the SOR were resolved through garnishments, which does not represent a good-faith effort to resolve one's debts. AG ¶ 20(d) minimally applies. Although not alleged, Applicant has been making monthly payments on the balance of a loan he owes a friend, which demonstrates some good-faith effort toward that debt.

Applicant disputed 11 delinquent debts with a credit bureau: 1 cable bill and 10 medical bills. None of those were listed on his May 2017 or January 2018 CBRs. Applicant explained his reasons for disputing the debts, and there is some evidence from which to conclude that he was successful in his disputes. The evidence establishes some mitigation under AG ¶ 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant's financial problems arose during a five-year period of time, as a consequence of factors that were outside of his control. His 2017 and 2018 CBRs do not list new debts since 2015. At this time, he has established a record of resolving debts, and sufficiently mitigated the SOR allegations. After observing his demeanor and listening to his testimony, I found Applicant to be honest and committed to responsibly managing his financial obligations. I have no doubts that he will resolve the remaining delinquent debt owed for the automobile repossession. Overall, the evidence does not raise doubts as to Applicant's present eligibility and suitability for a position of trust.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.p:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a position of public trust. National security eligibility is granted.

SHARI DAM
Administrative Judge