



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 17-01760
)	
Applicant for Public Trust Position)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

01/19/2018

Decision

MALONE, Matthew E., Administrative Judge:

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

Statement of the Case

On October 4, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a public trust position for his job with a defense contractor. After reviewing the results of the ensuing background

investigation, DOD adjudicators 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 June 1, 2017, DOD issued Applicant a Statement of Reasons (SOR) alleging facts raising trustworthiness concerns addressed through 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 September 13, 2017, and scheduled the hearing for September 27, 2017. The parties appeared as scheduled.³ I admitted Government Exhibits (GX) 1 – 3 without objection. Applicant testified but provided no documents at hearing. After the hearing, he provided a document I have included as Applicant Exhibit (AX) A without objection. I received a transcript of the hearing (Tr.) on October 6, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$21,756 for eight delinquent or past-due debts (SOR 1.a – 1.h). In response, Applicant admitted, with remarks, all of the allegations. In his e-QIP, he disclosed the debts alleged at SOR 1.a – 1.c and 1.f. At hearing, the Government presented a credit report and a summary of a March 2017 subject interview that established all of the SOR allegations. 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 55 years old and is employed by a defense contractor in a position that requires eligibility for a position of trust. Applicant's employer supports another company in its management of the health care system used by members of the military. His duties include safeguarding personally identifiable information (PII) associated with the health care system's constituents. Applicant has worked on that contract with his current employer and a previous employer since August 2016. (GX 1; GX 2)

Applicant was married from March 1985 until March 2016, when he and his ex-wife divorced. In February 2014, he moved out from the marital home where they had lived since July 2005. Applicant's two children from his marriage are now adults. After separating from his wife, Applicant supported her financially until the divorce. He has been living with, and supporting, his mother since he and his wife separated. (GX 1; GX 2; Tr. 26 – 27)

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

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. My decision in this case would have been the same under either version.

³ Applicant waived his right to 15-days prior notice prior to hearing as required by the Directive at Section E3.1.8.

From June 2005 until January 2014, Applicant worked for an information technology company, at times with a security clearance. He earned in excess of \$100,000 annually and had no difficulty meeting all of his financial obligations. Unfortunately, he was laid off during a reduction in force and could not find work until August 2016. After moving in with his mother in February 2014, she suffered a stroke and developed other medical problems, some of which continue, that required Applicant's assistance. In turn, he was unable to devote as much time as he needed to look for work. Since being hired for his current job, Applicant still lives with and supports his mother. Part of his support includes addressing her excess debt problems. Applicant estimates she owes about \$50,000 in past-due credit cards and other forms of debt. She does not have a mortgage on the house, but Applicant pays the utilities and most of her other bills. His financial support for her averages about \$900 each month. While he was unemployed, Applicant supported himself and his mother using a \$20,000 severance package from his previous employer. When that ran out, he relied on 19 weeks of unemployment benefits. (Answer; GX 2; TR 27 – 30, 53 – 62)

The debts alleged in the SOR originated or became delinquent before losing his job in 2014. Applicant testified that, after finding employment in 2016, he contacted his creditors in an attempt to resolve his debts. He claims he was unable to obtain the information he needed, and that most of his creditors advised him they had charged off the debts as business losses. Applicant has not resolved any of the debts documented by this record. He also has not sought credit counseling or other assistance in resolving his debts. Applicant earns about \$4,000 monthly after taxes. He estimates he has about \$3,000 in monthly expenses and usually has about \$600 remaining each month. Finally, Applicant is responsible for outstanding student loans he obtained for his younger child. The required monthly payment is about \$268, but Applicant is currently trying to arrange a student loan rehabilitation program to resolve arrearages not otherwise documented in this record. (Answer; GX 2; Tr. 22, 31 – 47)

Applicant has a solid record of performance since August 2016. He also served on active duty in the United States Navy from February 1980 until receiving an honorable discharge for medical reasons in November 1997. Aside from his period of unemployment between 2014 and 2016, Applicant has been steadily employed in the information technology (IT) industry. (GX 1; GX 2; AX A; Tr. 51 – 52)

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.⁴ 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,⁵

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

⁵ Directive, 6.3.

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).⁶ 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 public 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 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

⁶ (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.

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*); and 19(c) (*a history of not meeting financial obligations*). Applicant's financial problems arose when his employer laid him off in 2014. Around that time, he and his ex-wife separated, resulting in extra expenses for support and his own living quarters. When these circumstances arose, Applicant already had financial obligations he had incurred while he was making about \$25,000 more than he now earns. His financial problems were exacerbated by the need to support his ailing mother, and by difficulty in finding new employment for over two years. Since starting work in 2016, the debts documented in the Government's information remain unresolved. All of the foregoing supports AG ¶¶ 19(a) and 19(b).

I also have considered the potential applicability of the following 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; and

(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.

AG ¶ 20(a) does not apply. Applicant's debts and other financial problems are multiple and recent, in that most of his debts remain unresolved.

AG ¶ 20(b) does not apply. The Government does not dispute that Applicant's financial troubles arose from circumstances beyond his control. Nonetheless, AG ¶ 20(b) can only be applied when it also is established that the individual acted responsibly in the face of those circumstances. Available information shows Applicant has not constructively addressed any of his outstanding debts. Although he contacted his creditors and was told the debts had been charged off, he did not establish that the debts are no longer his responsibility or that he has taken other steps to resolve them. In short, Applicant did not demonstrate that, despite having the means to resolve some of his smaller debts, he has acted responsibly under these circumstances.

AG ¶ 20(c) does not apply. Applicant has not contacted any credit counseling, debt resolution, or other professional entity to assist in resolving his debts. He did not establish clearly that his financial problems are under control. To the contrary, he has taken on the resolution of his mother's debts and the rehabilitation of student loans he obtained for the benefit of his child.

Applicant did not provide information about his finances or a plan to resolve his debts. Before his unemployment and divorce, Applicant was largely able to meet his financial obligations, and he has not incurred new delinquencies since 2016. Still, the delinquencies documented herein remain his responsibility and the Government may reasonably demand some showing that he is addressing them in a reliable manner. On balance, the record evidence as a whole leads me to conclude that 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). I am mindful of Applicant's good work record and his honorable military service. Nonetheless, 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. Applicant has not taken any tangible steps to resolve any of his debts and he did not establish that his finances have improved so that they will not cause the Government to doubt his suitability for access in the future. All of the foregoing requires a conclusion that, in spite of the positive information in Applicant's background, doubts remain about his suitability to safeguard sensitive information. Because protection of the interests of national security is the principal focus of these adjudications, such 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.h:	Against 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 public trust eligibility is denied.

MATTHEW E. MALONE
Administrative Judge