



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



In the matter of:)	
)	
[Redacted])	ADP Case No. 17-02193
)	
Applicant for Public Trust Position)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

06/11/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves national security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for a public trust position or access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 17, 2015. On August 29, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), citing trustworthiness concerns under Guidelines F and E. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on September 20, 2017; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 30, 2017, and the case was assigned to me on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) sent Applicant a notice of hearing on April 19, 2018, scheduling the hearing for May 16, 2018. I convened the hearing as scheduled.

Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open to enable him to submit additional documentary evidence. He timely submitted AX F through P, which were admitted without objection. DOHA received the transcript (Tr.) on June 5, 2018.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.q and denied the allegation in SOR ¶ 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 28-year-old aircraft mechanic employed by a defense contractor since February 2015.¹ He left this job for about a year to resolve a divorce and his child-support obligations in another state, and he returned to his current job in 2016. (Tr. 19.) While he was away, his pay was about half what he earned in 2015 and what he now earns. (Tr. 33-34.)

Applicant served on active duty in the U.S. Navy from April 2008 to April 2012, and he worked for non-government employers from April 2012 to February 2015. He married in August 2009 and divorced in September 2015. (GX 4 at 4.). He has a six-year-old daughter for whom he pays child support. He is currently engaged to a woman with four children. Applicant does not have a current security clearance or public trust eligibility. He is unsure whether he held a clearance while in the Navy. (Tr. 10.)

Applicant completed his four-year enlistment in the Navy and received an honorable discharge, but he was not allowed to reenlist because he had not been promoted above pay grade E-3. (Tr. 39-40.) He had only a week's notice that he would not be allowed to reenlist. He was then unemployed for almost six months. When he found work, it was at low-paying temporary jobs. (Tr. 67-69)

When Applicant and his ex-wife first separated, he was paying about \$1,200 per month in child support for their daughter. That amount was reduced in 2016 to about \$600 and is automatically deducted from his pay. (Tr. 31; AX H-M.)

In August 2015, Applicant hired a credit-repair company to update and correct his credit reports and negotiate settlements of valid debts reflected in the credit reports. (GX 4 at 6.) He terminated his contract with the company when he temporarily left his job in 2015. In September 2017, Applicant hired his current credit-repair company to assist him. (AX A.)

¹ The SOR captioned this case as an ADP case rather than an ISCR, even though Applicant's job does not appear to involve ADP duties. The parties were unable to determine whether the case was properly captioned. (Tr. 19-21.) However, since the adjudicative guidelines are the same for both ADP and ISCR cases, any incorrect captioning of the case did not affect my decision.

The SOR alleges 17 delinquent debts that are reflected in credit reports from October 2015 and June 2017. The evidence concerning these debts is summarized below.

SOR ¶¶ 1.a, 1.b, and 1.d: a car loan charged off for \$5,201 in August 2013; a credit-card account charged off for \$2,603 in July 2013; and a credit-card account charged off for \$1,164 in March 2013. The same credit union was the creditor for all three debts. A report from Applicant's credit-repair company reflects that the disputes of the debts alleged in SOR ¶¶ 1.b and 1.d were resolved in Applicant's favor. The dispute of the debt alleged in SOR ¶ 1.a was resolved against him, and the debt is not yet resolved. (AX C.)

SOR ¶ 1.c: debt to Department of Veterans Affairs (VA) placed for collection of \$1,820 in November 2014. This debt was incurred when Applicant dropped out of a college course, paid for by the VA, without completing it. (GX 6 at 6-7.) He enrolled in college while taking care of his domestic issues in another state, and he dropped out to return to his current job. (Tr. 44.) The debt was paid in full in January 2017. (AX N.)

SOR ¶ 1.e: unsecured loan placed for collection of \$702 in June 2012. This debt is unresolved. Applicant testified that this was a payday loan, and he thought it had been paid by allotment. He also thought his credit-repair company had disputed it, but it is not reflected on the credit-repair documents he submitted at the hearing. (Tr. 45-47.) It is unresolved.

SOR ¶ 1.f: unpaid college book bill placed for collection of \$795 in August 2014. Applicant was required to repay a book stipend when he dropped out of college. Applicant testified that he was scheduled to begin paying \$50 per two-week pay period, starting with the pay period after the hearing. (Tr. 48-49.) No payments had yet been made when the record closed.

SOR ¶¶ 1.g, 1.h, 1.i: utility bills placed for collection of \$619 in May 2016, \$446 in May 2013, and \$586 in June 2012. Applicant's credit-repair company is handling the \$446 bill alleged in SOR ¶ 1.h, but none of these debts are resolved. (AX D at 3; Tr. 48-53.)

SOR ¶ 1.j: cable-service bill placed for collection of \$453 in June 2012. This debt is unresolved. (Tr. 52-53.)

SOR ¶ 1.k: medical bill placed for collection of \$381 in August 2012. This debt was successfully disputed by the credit-repair company. (AX E at 1.)

SOR ¶¶ 1.l, 1.m, and 1.n: medical bills placed for collection of \$315 in January 2011, placed for collection of \$245 in July 2013, and placed for collection of \$180 in September 2010. These debts are unresolved.

SOR ¶ 1.o: telecommunications bill placed for collection of \$81 in April 2014. This debt was paid in full in May 2018. (AX O.)

SOR ¶ 1.p: internet bill placed for collection of \$71 in November 2016. This debt has been paid in full. (AX P.)

SOR ¶ 1.q: judgment filed in October 2012 for \$531. This debt was incurred when Applicant and his wife were evicted from an apartment. (GX 4 at 6.) It was satisfied by garnishment of Applicant's pay. (AX G; AX M.)

Applicant's take-home pay is about \$1,200 per month. It is reduced by a \$300 garnishment for a debt not alleged in the SOR and by his child-support payments. (Tr. 34-35.) He, his fiancée, and his fiancée's four children live together. His fiancée is medically unable to work outside the home. She receives about \$288 per month in child support. (Tr. 35-36.) Applicant intends to return to school in June 2018, and his income while in school will increase by about \$1,900, due to the stipend he will receive from the VA. (Tr. 38.)

Applicant answered "No" to all the financial questions in Section 26 of his e-QIP. However, at the end of the section, he commented, "I have companies I owe money to on my credit report due to not having a stable income, but now I can arrange to make my payments and clear my report." (GX 1 at 41.) When he was interviewed by a security investigator in October 2015, he told the investigator that he did not list his debts because he did not know what they were. (GX 4 at 5.)

At the hearing, Applicant testified that he was aware of his debts when he submitted his e-QIP, because he had been working with a credit-repair company. He testified that he was being helped by a member of his employer's security department to make sure that his e-QIP was correctly completed, and he was not sure whether he overlooked the question or accidentally clicked on the wrong button and accidentally answered "No" to the financial questions when he meant to answer "Yes." (Tr. 65-66.)

Policies

The Under Secretary of Defense's Memorandum of November 19, 2004, treats ADP positions as sensitive positions, and it entitles applicants for ADP positions to the procedural protections in the Directive before any final unfavorable access determination may be made. The standard set out in the Manual and the adjudicative guidelines for assignment to sensitive duties is that 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. Manual ¶ 7.1a(2); AG ¶ 2.b.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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 or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise sensitive or classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting sensitive or classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive or classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence submitted at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The relevant mitigating conditions are:

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 (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;

AG ¶ 20(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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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;

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's inability to reenlist in the Navy, his periods of unemployment and underemployment, and his marital break-up were conditions largely beyond his control. He has acted responsibly by hiring professional assistance, successfully disputing some of his debts, and resolving the debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.k, 1.o, and 1.p.

AG ¶ 20(c) is not established. Applicant's credit-repair company does not provide the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c, 1.o, and 1.p, which have been paid in full. It is not fully established for the debt alleged in SOR ¶ 1.f, but Applicant has not submitted any evidence of payments. It is not established for the judgment alleged in SOR ¶ 1.q, because payment by involuntary garnishment does not constitute "good faith," within the meaning of this mitigating condition. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). Although several of Applicant's delinquent debts are not yet resolved, the adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has

engaged a credit-repair company that has systematically challenged the debts reflected on his credit reports and has just begun the next phase of negotiating settlements on debts that are determined to be valid. Applicant has a plan, and he has taken significant actions to implement it. He now has a stable job and sufficient income to pay his current obligations and implement payment plans for his unresolved debts.

AG ¶ 20(e) is established for the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.k. It is not established for the other debts alleged in the SOR.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition under this guideline is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant was candid, sincere, and credible at the hearing. He admitted knowing that he had numerous delinquent debts when he submitted his e-QIP and was not sure why all the questions were answered in the negative. However, he included a comment at the end of Section 26 disclosing that he had numerous delinquent debts and was working to resolve them. His disclosure negates intentional falsification of his e-QIP. AG ¶ 16(a) is not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position or access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a public trust position or a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and

applying the adjudicative factors in AG ¶ 2(d).² I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d).

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegation that he falsified his SCA and mitigated the national security concerns raised by his delinquent debts. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position or access to classified information.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.q: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position or access to classified information. Eligibility for access to sensitive or classified information is granted.

LeRoy F. Foreman
Administrative Judge

² The factors are: (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.