



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 17-02214

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is denied.

Statement of the Case

On June 28 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F. Applicant responded to the SOR on July 25, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on October 20, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 8, 2017, scheduling the hearing for December 7, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on December 15, 2017.

Findings of Fact

Applicant is 33 years old. He has worked for his current employer or a predecessor defense contractor since 2009. He served on active duty in the U.S. military from 2003 until he was honorably discharged in 2007. He has an associate's degree and additional college credits. He is married with three children.¹

Applicant was unemployed from October 2007 to January 2008 and from August 2008 to February 2009. He reported a number of delinquent debts on his May 2014 Questionnaire for National Security Positions.² He noted:

Financial responsibility is difficult to achieve if you do not have the appropriate disciplines and skills instilled into you. My wife and I both struggled with it before and it was even more challenging when we wed and began our family. We are however finally starting to get a grasp on things and learning the ways of a disciplined budget.³

Applicant was interviewed for his background investigation in June 2014. He discussed his financial problems and delinquent debts. He stated that he was learning to manage his money. He was successfully managing a budget. He stated that he would like to pay his debts, and he was considering filing a Chapter 13 bankruptcy case.⁴

The SOR alleges 17 delinquent debts totaling about \$36,000. Applicant admitted owing all the debts. The debts include four debts under \$100; \$196 owed for a traffic citation or parking violation; and \$9,956 owed on an auto loan after the car was towed off a military installation because it was not properly registered, and Applicant never paid the charges to get the car back.⁵

Applicant has not paid any of the debts alleged in the SOR. One of his children had serious medical problems in 2015, requiring surgery and 11 days in the hospital. He stated that his family lives paycheck to paycheck, and he did not have the money to pay the debts. He emphasized that he is a man of faith, integrity, and character. He also noted that he has attention-deficit hyperactivity disorder (ADHD). He went to a debt-management counselor who advised him to file bankruptcy. He planned to use his income tax refund from the 2015 tax year to do so, but his wife's grandfather got sick. He was unable to use his 2016 refund to pay for his bankruptcy because the IRS

¹ Tr. at 20-27.

² Tr. at 25-26; GE 1, 2.

³ GE 1.

⁴ GE 2.

⁵ Tr. at 40-42; Applicant's response to SOR; GE 1-4.

withheld \$4,700 from that refund and applied it to his wife's defaulted student loans. He plans to use his income tax refund from 2017 to file bankruptcy.⁶

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

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. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations 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

⁶ Tr. at 16-19, 22-24, 29-30, 35-40, 44.

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including multiple delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are 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, 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was unemployed from October 2007 to January 2008 and from August 2008 to February 2009. One of his children had serious medical problems in 2015, requiring surgery and 11 days in the hospital. His wife's grandfather got sick. These events were beyond his control. However, Applicant also admitted that he struggled with financial responsibility, he had an unpaid traffic citation or parking violation, and the largest debt in the SOR arose because he had an improperly registered car on a military installation.

Applicant has not paid any of the debts alleged in the SOR, not even the citation or the four debts that were under \$100. He stated that he intended to file bankruptcy. The Appeal Board has held that intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant did not mitigate the financial considerations trustworthiness concerns.

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:	Against Applicant
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Subparagraphs 1.a-1.q:	Against Applicant
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Conclusion

It is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Edward W. Loughran
Administrative Judge