



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



In the matter of:

)
)
)
)
)
)
)

ADP Case No. 17-03252

Applicant for Public Trust Position

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel

For Applicant: *Pro se*

05/25/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant has mitigated the financial considerations trustworthiness concerns, but he failed to mitigate personal conduct trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On January 12, 2017, Applicant submitted a security clearance application (SCA). On October 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guidelines F, Financial Considerations, and E Personal Conduct. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.¹

¹ ADP Case No. 14-01655 (App. Bd. Nov. 3, 2015) ("The Guidelines apply to all adjudications under the Directive, including both security clearance and public trust cases.")

On November 1, 2017, Applicant submitted an answer to the SOR and provided additional documentation labeled as Applicant Exhibits (AE) A-F. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing. On December 14, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five items, was mailed to Applicant on December 21, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant responded to the FORM on February 5, 2018, and provided documents labeled as (AE) G and H. Government Exhibits (GE) items 1 through 5 and AE A-H were admitted into evidence without objection. The DOHA Office assigned the case to me on April 9, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.f, and he denied ¶ 1.g, under Guideline F. He admitted ¶ 2.a under Guideline E. His admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old and employed by a Federal government healthcare contractor as a surgical technician since July 2016. He has never married. He served active duty in the U.S. Navy from October 2005 through October 2010. He received an Honorable discharge. He is currently enrolled in college. He is requesting access to sensitive information eligibility. (GE 2)

The SOR alleges that Applicant failed to timely pay a credit union credit card account referred for collection in the amount of \$7,222 (¶ 1.a). Applicant admitted that he was having this debt resolved through a credit counseling company that he joined on August 31, 2017. According to AE C, the credit counseling company was able to negotiate the amount down to \$2,600. The agreement provided that Applicant was to make monthly payments on this account beginning in October 2017, with his last payment in March 2019. The payments come directly out of Applicant's paycheck to the credit counseling company, who in turn disperses the money to the creditors. (GE 1; AE A, C)

The SOR also alleged an account placed with a collection agency in the amount of \$5,741 (¶ 1.b). Based on the August 2017 credit report (GE 4), this account remained the same when compared to his March 2017 credit report. Applicant has enrolled this account with the credit counseling company and the account is still in the negotiation process. (GE 4, 5; AE A, F)

A delinquent car loan account in the amount of \$4,193 was admitted by Applicant (¶ 1.c). He listed in his Answer that he has made the account current and he continues to make monthly payments of \$375. He submitted a document showing a \$375 payment

was made in September 2017. The creditor statement showed a balance of \$3,137.03, which reflects a reduction of over \$1,000 of the amount alleged in the SOR. (AE A, D)

The SOR alleged another collection company account in the amount of \$654 (¶ 1.d). Applicant submitted documentation after receipt of the FORM. His e-mail stated that the collection company had agreed to a settlement of \$491.72. Applicant provided documented checking account transactions showing that he paid half of the settlement amount in January 2018, and he made the final payment in February 2018. This account is now fully resolved (¶ 1.d). (AE G, H)

There were two accounts that had been placed with collection agencies in the amount of \$511 (¶ 1.e), and \$358 (¶ 1.f). Based on the August 2017 credit report, these account balances remained the same when compared to his March 2017 credit report. Applicant enrolled these accounts with the credit counseling company in August 2017. The \$511 account is still in the process of negotiation. Applicant stated that the account for \$358 was settled in August 2017 in the amount of \$322.83. He did not provide sufficient documentation to show that this particular account was settled or fully resolved. (GE 4, 5; AE A, E, F)

Applicant denied the last debt alleged in the SOR for \$75 (¶ 1.g). It appears to be an insurance-related account. Applicant's Answer reflects that he disputed this debt with the credit bureau. He stated that this account has since been removed from his credit report, but he did not submit any documentation or the underlying basis of the dispute.

During Applicant's April 2017 background interview, he was asked whether he had any adverse financial issues to report. Applicant told the investigator that he did not have any adverse financial issues, as he also indicated on his SCA. The investigator confronted Applicant with several delinquent accounts reflected in his March 2017 credit report. Applicant stated that his financial problems started approximately four years ago. His indebtedness is due to him living beyond his means and not making wise decisions with his credit. (GE 3, 5)

Applicant told the investigator in early 2017, he had reviewed his current credit standing and decided that he wanted to clean it up. He acknowledged the delinquent accounts as his responsibility. Applicant did not list all of his delinquent accounts on the SCA because he was not aware of some of the listed accounts. There were some accounts, however, he knew were delinquent. He claimed those accounts were not listed on the SCA due to oversight. Applicant stated that he has not taken any steps towards satisfying his debts due to a busy work schedule and not having the opportunity to contact his creditors. In his Answer to the SOR, documented in an e-mail dated November 3, 2017, Applicant admitted allegation (¶ 2.a). He stated that he was having computer problems and clicked through all of the financial questions on the SCA without reading them. (GE 1, 2, 3, 5; AE A)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “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.” (See Regulation ¶ C6.1.1.1.)

When evaluating an applicant’s eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG. (Directive, Enclosure 2) These 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.”

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 security 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 protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator or, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.²

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

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

Applicant experienced financial difficulties four years ago due to living beyond his means and making poor financial decisions. His credit reports from his 2017 investigation reflected seven delinquent accounts totaling \$18,754. There is sufficient evidence to support the application of the above disqualifying conditions.

Conditions that could mitigate 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

² See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

Applicant admitted to making poor financial decisions over the years that put him in an unfortunate position. In an effort to take control of his credit, he engaged a credit counseling company for assistance. He is making payments on two accounts and he has paid one, possibly two accounts, alleged in the SOR. The money is automatically deducted from his paychecks and then paid to the credit counseling company who then makes payments to the creditors. Applicant stated that he successfully disputed a \$75 account, but there is nominal evidence to support his claim. The other two remaining unpaid accounts have been placed with the credit counseling company and they are still in the negotiation process. He has demonstrated he has made a good-faith effort to reform his financial practices. AG ¶¶ 20(a), (c) and (d) apply.

The trustworthiness adjudication is not aimed at collecting an applicant's personal debts.³ In evaluating Guideline F cases, the Appeal Board has held that an applicant is not required, as a matter of law, to establish that he has paid off the debts in the SOR. He is required to demonstrate that he has an established plan to resolve his financial problems and that he has taken significant actions to implement that plan.⁴

Guideline E: Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single

³ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

⁴ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant intentionally did not disclose any adverse financial information on his SCA, as required. When asked by the investigator whether he had any adverse financial issues to report during his April 2017 background interview, he falsely stated he had nothing to report. Actually, he was aware that he had some delinquent accounts since he checked his credit in early 2017. AG ¶¶ 16(a) and 16(c) are established.

AG ¶ 17 lists conditions that could mitigate security concerns including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Appellant provided inconsistent statements as to why he left off his adverse financial issues when he completed the SCA in January 2017. After deliberately omitting this fact from his SCA, he again denied having any delinquent accounts when he was interviewed by an investigator about three months later. Applicant then admitted in the same interview that he had checked his credit in early 2017. He claimed the delinquent accounts, which he was fully aware of were not disclosed on the SCA due to oversight. In his response to the SOR, he stated that he was having computer issues while filling out the SCA, and he “clicked through the questions without reading” them. He cannot receive the full mitigating credit of any of the AG ¶ 17 mitigating conditions because his inconsistent statements reflect his lack of credibility. His intentional omissions and false statement are recent, serious, and may recur in the future. Personal conduct security concerns are not mitigated.

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(a):

(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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Beginning in August 2017, Applicant joined a credit counseling program to bring his delinquent debt under control. He did so before he received the SOR. Applicant has indicated a willingness to continue to repay his debts. He took responsible action by paying off one, possibly two accounts, and he is currently making payments on two other accounts. Overall, it appears Applicant’s financial problems are now under control and fully in the process of being resolved. He has demonstrated his commitment to overcoming his financial difficulties and he has taken steps to establish he is now

financially responsible. He has successfully mitigated the financial considerations trustworthiness concerns.

The evidence against his approval of access to sensitive information is more persuasive than the evidence supporting approval. Appellant provided inconsistent statements about why he failed to disclose his financial delinquencies on his SCA. Taken together with his intentional false statement to the investigator during his background interview raise grave credibility concerns. Applicant's falsification of the security clearance application raised serious questions about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the personal conduct trustworthiness concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge