



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



In the matter of:)	
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)	ADP Case No. 17-03750
Applicant for Public Trust Position)	

Appearances

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

05/23/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

The Applicant seeks eligibility to occupy an automated data processing (ADP) position designated ADP-I/II/III. On November 27, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued to him a Statement of Reasons (SOR) detailing concerns under Guideline F (Financial Considerations).¹ In a response dated December 18, 2017, he admitted all allegations and requested a determination based on the written record. On February 28, 2018, the Government issued a File of Relevant Material (FORM) with five attachments (“Items”). The case was assigned to me on May 17, 2018. Based on my review of the record as a whole, I find Applicant failed to mitigate financial considerations trustworthiness concerns.

Findings of Fact

Applicant, a high school graduate, is a 33-year-old aircraft mechanic who has worked for the same entity since 2016. Applicant served on active duty in the U.S. military from October 2004 until October 2013, when he was honorably discharged. Other than a period of unemployment from July 2015 to October 2015, Applicant has been employed

¹ 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 (AG) effective within the DOD on or after June 8, 2017.

since his military service. He married his wife in late 2011, immediately following his divorce from a former spouse. He has two children, ages 8 and 6.

In completing his October 2016 application for a trustworthiness position, Applicant disclosed that he had some debt. In response to the SOR, he admitted, and his credit reports reflect, that he has about \$20,000 in delinquent debt. Reflected in SOR allegations 1.a-1.j, his delinquent accounts consist of consumer debts, utilities, and a U.S. Veteran's Administration debt. Those debts range from \$92 to \$5,567.

In responding to the SOR, Applicant wrote that he has paid the U.S. Veteran's Administration debt noted at allegation 1.b for \$4,020. He failed, however, to provide any documentation corroborating this claim. Otherwise, Applicant simply wrote "I admit" in response to each delinquent account noted in the SOR allegations.

The FORM offers scant information about Applicant in terms of how he acquired the debt at issue. His 2011 divorce and remarriage, and his brief period of unemployment in 2015, are the only conditions noted that may have contributed to his financial distress. References to those events, however, are so brief, it cannot be assessed whether he acted responsibly under the circumstances. Applicant offered no explanation regarding his strategy for addressing his delinquent debt, if any. He similarly gave no indication as to his present financial fitness.

Policies

In this matter, The Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017, is controlling. The DOD considers ADP positions to be "sensitive positions." For a person to be eligible for sensitive duties, the person's loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. AG ¶ 2.c. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is made. (Under Secretary of Defense's Memorandum for the Director, Defense Office of Hearings and Appeals, dated November 19, 2004)

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 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.

A public trust position decision resolves whether it is clearly consistent with the interests of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain,

extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The “clearly consistent with the interests of national security” standard requires that “any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b). An eligibility for a public trust position decision is not a determination of the loyalty of the applicant concerned. It is merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, Applicant admits, and his credit reports reveal, that he has about \$20,000 in unaddressed delinquent debt. This is sufficient to invoke disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance related security concerns posed here:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit 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.

The delinquent debts at issue are multiple in number and, based on the scant evidence offered, largely unaddressed. No evidence of a good-faith effort to repay any of the debts was offered. Moreover, the reasons as to how this situation was created and why it continues are unknown. While it can be assumed that Applicant's divorce and short period of unemployment may have contributed to their creation or perpetuation, insufficient facts were offered to gauge whether Applicant acted responsibly at the time. Further, there is no evidence he has received financial counseling, and there is no suggestion he disputes any of the debts cited. Given the paucity of information offered, none of the available mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

Applicant is a 33-year-old aircraft mechanic who has earned a high school diploma and served honorably in the U.S. military. Other than a period of unemployment from July 2015 to October 2015, he has been continuously employed since his military discharge. Previously divorced, he remarried in 2011. He has two minor children.

In relying on the written record, Applicant chose a determination on the most scant of facts. There is little to no information as to the creation of the debts at issue, what led to their delinquency, or what, if any, efforts he has taken to address them. Even his sole reference to payment of one of the delinquent accounts at issue is terse, unelaborated, and unsubstantiated. There is no indication as to what measures he has or can take in relation to these delinquent debts. Without more information, financial considerations trustworthiness concerns remain unmitigated.

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
Subparagraphs 1.a-1.j:	Against Applicant

Conclusion

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

Arthur E. Marshall, Jr.
Administrative Judge