



**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. 17-03891

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has several unresolved delinquent debts. While the debts arose due to conditions beyond his control, he did not put forth a reasonable plan for resolving them, nor did he establish good-faith efforts to do so. Applicant did not provide sufficient evidence to mitigate financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 16, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) application for a position of public trust. On December 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on January 19, 2017, and elected to have his case decided on the administrative (written) record, without a hearing. On January 31, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Government Exhibits (GE) 1 through 6. Applicant received the FORM on February 5, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. On February 28, 2018, he responded to the FORM with a narrative, and one-page excerpts from two documents.¹ He did not object to admission of any of the Government's exhibits. The SOR and the Answer (combined as Item 1) are the pleadings in the case. GE 2 through GE 6 are admitted without objection.

On December 10, 2016, the Director of National Intelligence issued Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG). These AGs apply to all adjudicative decisions issued on or after June 8, 2017.² Any changes resulting from the issuance of new AGs did not affect my decision in this case.

The case was assigned to me on April 27, 2018. On July 12, 2018, I emailed the parties and reopened the record until July 31, 2018, to afford Applicant the opportunity to submit updated information.³ Applicant timely submitted three credit reports, which are marked as Applicant's Exhibits (AE) A, B, and C, and admitted without objection.⁴ The Government also submitted a current credit report, which is marked and admitted as GE 7. The record closed on July 31, 2018.

Findings of Fact

Applicant admitted all three SOR allegations, ¶¶ 1.a, 1.b, and 1.c. His admissions and other statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 55 years old. He has never married and has no children. He earned his bachelor's degree in 1995 and a law degree in 1999. He served in the military reserves from 1980 to 1995, and was discharged honorably. (GE 2; GE 3)

Applicant has worked for the same employer, a defense contractor in the health care industry, since October 2015. He works in the nursing field. He has held various

¹ In his "Addendum A," Applicant provided an excerpt from his e-QIP (a complete copy of which is GE 2). In his "Addendum B," Applicant provided an excerpt of a credit report (a complete copy of which he later submitted as Applicant's Exhibit A). Though they are not complete documents, Addendums A and B are part of the record in the case, as part of Applicant's answer.

² The June 2017 AGs are available at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>. SEAD 4 "establishes the single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." SEAD 4 at ¶ B.

³ Hearing Exhibit (HE I).

⁴ AE A is a credit report from July 2017. AE B and AE C are credit reports from July 2018, as is GE 7.

positions, mostly as a registered nurse, since at least 2003. He worked for a university medical center from 2003 until 2009, when he left to pursue other opportunities. He was unemployed from February 2009 until March 2010. He worked at a veteran's hospital from April to August 2010, but left in a dispute over proper staffing levels. He was then unemployed again until he was rehired at the medical center in April 2011. (GE 2; GE 3)

Applicant worked at the medical center until June 2011, but left to care for his mother who was ill and unable to care for herself. He was unemployed until December 2012. His mother passed away in December 2013. His stepfather was also ill during this period. Applicant worked part time as a nurse for private companies from December 2012 to September 2015. He began his current job the next month. (GE 2)

When he stopped working in June 2011, Applicant initially used funds from his state retirement account to pay his living expenses, as he had during his prior periods of unemployment. He then began paying his mortgage and his monthly bills with his credit cards. When he returned to work in December 2012, he was only working part time. He got a second part-time job when his mother went into hospice care in November 2013. (GE 3) Applicant has been employed full time since October 2015. (Answer at 2)

The three SOR debts stem from 2012 to 2015. Applicant disclosed several debts on his September 2016 e-QIP application for a position of public trust, including the SOR debts. (GE 1; GE 2)

SOR ¶ 1.a is a \$24,152 debt placed for collection by a credit-card company. SOR ¶ 1.b is a \$12,678 charged-off second mortgage from a university credit union. SOR ¶ 1.c is an \$8,271 charged-off credit-card account. (GE 4, GE 5, GE 6; AE A) All of the debts alleged remain listed on July 2018 credit reports provided by both parties as updated information. (GE 7; AE A; AE B, AE C)

In answering the allegations, Applicant points to the fact that he resolved an unalleged credit-card debt. This debt was resolved before Applicant submitted his e-QIP. ((Answer Addendum B; AE A; GE 2 at 40-41) He notes that he has not filed for bankruptcy and has not received credit counseling. He states that he has brought his other accounts current, including his student loans. He states his debts are not the result of irresponsible spending. (Answer; FORM Response)

Applicant has not put forth a plan to resolve the three debts alleged. He has neither stated nor provided any documentation to verify that he has contacted the three SOR creditors in an attempt to pay, settle, or otherwise resolve the debts. He provided no documentation or information about his current income, expenses, assets, or general ability to pay those debts.

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. 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.⁵

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.⁶ 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.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. While an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. Applicants have the ultimate burden of persuasion to establish their eligibility for a public trust position.⁷ 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." 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 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 [sensitive] information. An individual who is financially

⁵ Directive, ¶ 3.2.

⁶ Directive, Enclosure 2.

⁷ Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15.

overextended is at risk of having to engage in illegal 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.⁸

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

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

The government alleged that Applicant had incurred three delinquent debts totaling just over \$45,000. Even if the debt occurred for reasons other than irresponsible spending, the mere fact of the delinquencies is sufficient to establish a financial security concern. The evidence is sufficient to raise 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began after he took time off from work to care for his elderly, ailing parents. This was a condition beyond his control that significantly impacted his finances. The first prong of AG ¶ 20(b) therefore applies. To fully apply AG

⁸ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant settled one of his credit-card debts. However, that debt was resolved in April 2016, before he submitted his e-QIP. Applicant did not address any more recent attempts to settle, pay, or otherwise resolve, his remaining debts from that period, which are significant.

There is no requirement that SOR debts be resolved all at once, or in any particular way. However, Applicant has yet to detail a plan for paying off the SOR debts alleged, or any agreed-upon payment plans with any of the SOR creditors, or any payments made towards any of those debts.

Two of the SOR debts are charged off. However, a delinquent debt is not considered mitigated because the creditor has charged off the account. This is because the creditor's choice to charge off the debt for accounting purposes does not affect the debtor's obligations to the creditor.⁹ While these debts may now be charged off, this does not excuse Applicant from making efforts to resolve them since he does not dispute that they are his.

Applicant has essentially promised to take responsible action to resolve his remaining debts. Promises to pay off delinquent debts in the future, however sincere, are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner.¹⁰ Applicant's SOR debts remain unresolved, and he has not shown that he has taken responsible action to resolve them. AG ¶ 20(b) does not fully apply.

There is no evidence that Applicant received financial counseling. There is insufficient evidence to conclude that his financial problems are being resolved or are under control, or that he has made a good-faith effort to repay overdue creditors or otherwise resolve his debts. AG ¶¶ 20(c) and 20(d) do not apply.

Even though they originated several years ago, Applicant's debts are ongoing and unresolved. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

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):

⁹ ISCR Case No. 09-01175 at 2 and fn. 1. (App. Bd. May 11, 2010).

¹⁰ ISCR Case No. 09-05252 at 3 (App. Bd. Dec. 9, 2010); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999).

(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. Even though Applicant's debts occurred largely for reasons beyond his control, I cannot conclude that he is resolving them responsibly without more information. As yet, he has not yet set forth sufficient evidence of a responsible repayment plan, and has not shown that he has taken steps to put it into place. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated 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

Subparagraphs 1.a-1.c: Against Applicant

Conclusion

In light of all of the circumstances 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.

Braden M. Murphy
Administrative Judge