



**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. 17-03931

Appearances

For Government: Andrew H. Henderson, 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 December 13, 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 notarized on January 16, 2018, he admitted all allegations and requested a determination based on the written record. On February 26, 2018, the Government issued a File of Relevant Material (FORM) with seven 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.

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.

Findings of Fact

Applicant is a 46-year-old calibration technician who has worked for the same defense contractor since April 2016. Before accepting this position, he worked part time for about three months, following a period of continuous employment dating back at least a decade. He has earned a high school diploma. Single, he has one teenage child.

Little is known of Applicant's financial background. What is known is that by 2009, Applicant had been spending too much money, accumulating too many bills, and living beyond his means. To get a "fresh start," he filed for Chapter 7 bankruptcy in February 2009. (FORM, Item 3, at 2) That bankruptcy was discharged in May 2009,

By 2014, Applicant was again living beyond his means and had accumulated more delinquent debt. In particular, he had overused credit cards that were offered to him when his credit improved after his 2009 bankruptcy was discharged. He was also facing eviction at the time. In February 2014, he applied for Chapter 13 bankruptcy protection "in an effort to pay off his debts on his own and learn how to manage his money properly." (FORM, Item 3, at 2) He reported that, as of September 2017, payments to his bankruptcy trustees were being made by automatic debit from his pay.

Despite the relief provided by the 2014 bankruptcy petition, Applicant again has acquired notable delinquent accounts. In his answer to the SOR, he attributed them to "poor financial management." (SOR Response) At issue in the SOR are the following allegations related to delinquent accounts:²

1.c - Telephone provider collection account (\$808) – In response to the FORM, Applicant attributed this balance to his understanding that a subsequent provider, noted below at 1.g, would buy out this account if he switched to its plan. That did not occur. In response to the SOR, Applicant wrote that he had contacted this creditor and would pay the balance over time. No documentary action was offered reflecting a formal dispute or commencement of payments on the balance owed.

1.d – Telephone provider collection account (\$470) – In response to the FORM, Applicant wrote that this is the remaining balance on an account that he had thought was included in his last bankruptcy. He noted that he has since made arrangements to pay this debt, but no documentary evidence of payment was offered.

1.e – Utility collection account (\$133) – In response to the FORM, Applicant noted that he had thought his deposit would cover any final balances. He offered a copy of an August 2014 bill reflecting this balance due. (FORM Response) He wrote he is making payments on the debt, but offered no documentary evidence of such payments.

1.f – Delinquent medical account (\$46) – In response to the FORM, Applicant wrote that he had thought this was a past-due deductible to be paid by his health care insurer.

² SOR allegations 1.a and 1.b pertain to Applicant's 2009 and 2014 bankruptcy petitions, respectively.

In response to the SOR, Applicant wrote he would begin payment on this debt in 2018. No documentary evidence reflecting any payment was offered.

1.g – Telecommunications collection account (\$835) – In response to the SOR, Applicant wrote that he had agreed to a settlement on this account with payment of \$459.56. A copy of the December 2017 offer of settlement was attached to his FORM Response, but no documentation reflecting acceptance of the offer or payment toward the offered settlement sum was offered.

1.h – Collection account (\$28) – Applicant thought his “ex” had handled this debt after their break-up. In response to the SOR, Applicant wrote he would pay this debt in 2018. Later, in response to the FORM, he wrote that he had made arrangements to settle the debt, but no documentary evidence of any such efforts was introduced.

In addressing the FORM, Applicant apologized for raising any concerns regarding his security clearance suitability. He wrote that he had taken actions to make payment arrangements, receive financial counseling, and seek secondary employment, but provided scant information corroborating these assertions.³ He noted that financial issues have never distracted him from his professional duties, and that he would never break the law. He loves his job and is proud to work in his hometown.

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

³ Notice is taken that Applicant would have had to complete financial counseling as a requirement for filing both bankruptcy petitions.

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

Guideline F- Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the 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 sensitive information.

Here, Applicant admits he filed for bankruptcy protection in both 2009 and in 2014, and has since accumulated additional delinquent debts. He admits that his past bankruptcy petitions were caused, in part, by overspending and failing to live within his means. This is sufficient to invoke financial considerations disqualifying conditions:

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

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

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

AG ¶ 19(e): spending beyond one’s means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

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.

Applicant has a history going back almost a decade reflecting his inability to live within his means. This history continues to date, despite two bankruptcy petitions, in 2009 and 2014. Based on the documentary evidence offered by the Government, his more recent delinquent debts remain largely unaddressed. Applicant offered scant information regarding his efforts to avoid this recurring scenario of debt acquisition from repeating itself in the future, other than noting he is making payments on his Chapter 13 bankruptcy. That, and the fact insufficient time has passed for him to demonstrate that he can live within his means moving forward, obviate application of AG ¶ 20(a). Moreover, inasmuch as his problem is not based on circumstances beyond his control, AG ¶ 20(b) does not apply.

It can be assumed that Applicant received financial counseling as one of the requirements associated with the bankruptcy filing process. However, there is scant information indicating Applicant's financial planning has improved or that his debts are now being resolved or brought under control. Furthermore, while he was able to address past delinquent debts through bankruptcy, which is a lawful and legitimate method for addressing such financial distress, it has become axiomatic in this forum that bankruptcy does not necessarily reflect a good-faith effort to address one's debts. Consequently, AG ¶ 20(c)-(d) do not apply. Moreover, in the absence of documentation that Applicant has formally disputed any of the delinquent debts now at issue, AG ¶ 20(e) does not 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 46-year-old technician who has worked for the same entity since April 2016. He has been continuously employed in some capacity for over a decade. He has earned a high school diploma. He is single and is the father of a teenage child.

In 2009, Applicant filed for Chapter 7 bankruptcy protection to get a "fresh start" after a protracted period of accruing significant delinquent debt by overspending and failing to live within his means. This scenario repeated itself in February 2014, when he sought another fresh start by filing for Chapter 13 bankruptcy petition. By the time the SOR was issued in December 2017, he was again spending too much money, failing to live within his means, and acquiring more delinquent debts.

Applicant's cycle of debt acquisition has repeated itself thrice over the past decade. The evidence offered in response to both the SOR and the FORM references efforts taken to address the six delinquent debts presently at issue, but there is no documentary evidence reflecting progress on any of these delinquent accounts. This lack of progress is not just limited to the larger debts, such as the one for \$835, but extends to the minor debts, with balances of \$28 and \$46.

This process does not require an applicant to satisfy all of his delinquent debts. It does, however, expect an applicant to have formulated a realistic method or strategy for addressing his delinquent debts, and to offer some documentary evidence indicating such a strategy has been implemented. Here, with no documentary evidence of progress on these delinquent balances, and, aside from mere promises to pay in the future, no actual strategy for realistically addressing them in the future, 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.h:

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 to occupy a trustworthiness position. Eligibility to occupy a trustworthiness position is denied.

Arthur E. Marshall, Jr.
Administrative Judge