



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



In the matter of:)	
)	
)	ADP Case No. 14-03190
)	
Applicant for Position of Trust)	

Appearances

For Government: Richard Stevens, Esquire
For Applicant: *Pro se*

08/11/2015

Decision

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

Applicant failed to submit sufficient documentary evidence to mitigate Guideline F trustworthiness concerns. Applicant’s eligibility to occupy a position of trust is denied.

Statement of the Case

On August 4, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) citing trustworthiness concerns under Guideline F (Financial Considerations) regarding his eligibility to occupy an automated data processing (ADP) position designated ADP-I/III/III. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 September 1, 2006. Applicant responded to the SOR on September 16, 2014, admitting five of the eight allegations raised and requesting a determination based on the written record.

On February 17, 2015, the Government issued a File of Relevant Material (FORM) that contained four attachments. Applicant timely responded to the FORM with a letter and five attachments, accepted in the record as exhibits (Exs.) 1-5. The case was assigned to me on May 21, 2015. Based on my review of the case file and

submissions, I find Applicant failed to mitigate financial considerations related to his eligibility for a public trust position.

Findings of Fact

Applicant is a 23-year-old applicant for a position of trust. He graduated from secondary school in May 2010. He completed some college coursework. He last attended college in 2013. Applicant is single, and has no children.

In 2012, at age 20, Applicant left home to support himself as a cook. He secured a car loan and a credit card. Inexperience led him to acquire debts. He was determined not to seek financial assistance from his family. He supplemented his income by donating plasma on a regular basis. His education became sporadic. Through 2013, he lived paycheck to paycheck, lacked sufficient income to meet his obligations, and was in "survival mode." (Response to FORM)

In his Response to FORM, Applicant wrote of several improvements he made in his life in terms of his finances. He noted that he has reliably paid his rent for nearly two years; he is current on his car loan; he obtained, used, and paid off a furniture store credit card; and he has made progress on his delinquent debts. Applicant has returned to school and is studying business. He provided no documentary evidence, however, of these efforts or achievements.

At work, Applicant is a highly effective employee with a positive performance record. One reference wrote Applicant is known for his excellent communication skills, dependability, honesty, and diligence. Another source reports that he is trustworthy and dedicated. Applicant takes full responsibility for his financial problems. His Response to FORM is well-written, earnest, and straight-forward.

At issue are eight delinquent debts, amounting to approximately \$8,440. In his response to the SOR, he denied the obligations noted in the SOR at 1.f-1.h, which represent about \$2,050 in debt. In his Response to FORM, he took "ownership of any bills and accounts that I have on my credit report as of now." Applicant did not offer a credit report more current than the one included in the FORM, dated January 2014. It reflects the obligations noted at SOR 1.f-1.h, and notes that the \$510 account balance at 1.h was in dispute.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for a public trust position.

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(c), 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks a public trust position 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth the applicable concern: 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 information.

Here, the Government introduced credible evidence showing Applicant was delinquent on eight accounts, amounting to a total debt balance of approximately \$8,440. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

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

Five conditions could mitigate these finance related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated 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.

Multiple delinquent debts remain unpaid. They were acquired by Applicant recently, through youth, inexperience, and a desire to succeed without parental aid. There is no evidence as to whether he sought financial advice or guidance at the time, or whether he has since received financial counseling. Applicant details several accomplishments he has made in his finances and in his personal life, but failed to provide any documentation corroborating such claims. With the possible exception of one account (SOR 1.h for \$501) which was in dispute in 2014, there is no documented evidence of any progress on the delinquent debts at issue. Based on the scant evidence submitted, there is insufficient evidence to raise any of the available mitigating conditions.

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). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a young man with some post-secondary education and an excellent work record. He left home at 20 to support himself. Life as a cook and occasional student did not meet his financial needs. A notable amount of debt was acquired and became delinquent. Now 23 years old, Applicant accepts full responsibility for his financial errors. According to his Response to FORM, he learned from his mistakes.

Applicant chose a determination based on the written record. In his Response to FORM, he wrote a narrative enumerating the steps he has made to improve his finances and his life. He failed, however, to corroborate his statements with documentary evidence.

This process does not require an applicant to address all debts at issue. It does, however, demand that an applicant articulate a workable plan to address their delinquent debts, show that their plan has been successfully implemented, and document that their financial outlook has improved. Here, Applicant provided insufficient documentary evidence to establish that progress is being made on his delinquent debts. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the trustworthiness concerns raised by his financial situation. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with national security to grant him eligibility for a public trust position.

Formal Findings

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, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

Arthur E. Marshall, Jr.
Administrative Judge