



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



In the matter of:)	
)	
[NAME REDACTED])	ADP Case No. 14-03832
)	
Applicant for Position of Trust)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

04/01/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s inability to pay his student loan and other debts arose from circumstances beyond his control. But he has acted responsibly in addressing his student loans as his resources have allowed. In concert with positive information about his judgment and reliability, this record is sufficient to mitigate the trustworthiness concerns raised by the Government’s information. Applicant’s request for eligibility to occupy a position of trust is granted.

Statement of the Case

On March 29, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for an ADP I/II/III position for his job with a defense contractor. After reviewing the results of the ensuing background investigation, Department of Defense (DOD) adjudicators were unable to determine that

it is clearly consistent with the interests of national security to grant Applicant's request for a position of trust.¹

On October 2, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise trustworthiness concerns addressed through the adjudicative guideline (AG)² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on January 19, 2015, and I convened a hearing on February 10, 2015. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 4. Applicant testified and presented Applicant's Exhibits (Ax.) A and B. The record closed on February 19, 2015, when I received Applicant's post-hearing submissions, which are included in the record as Ax. C, D and E.³ All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 2, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$134,838 for 13 delinquent or past-due debts (SOR 1.a - 1.m). Nine of the alleged debts are student loans. Two others (SOR 1.h and 1.j) are lines of credit obtained to meet expenses while in law school or while studying for the bar exam. The other two debts (SOR 1.i and 1.m) are credit card accounts used after he passed the bar and was looking for work between 2009 and 2013. Applicant admitted, with explanations, all of the SOR allegations. In addition to the facts established by Applicant's admissions, and based on all available information, I make the following findings of fact.

Applicant is 34 years old and is employed by a defense contractor in a position that requires eligibility for a position of trust, because his employer supports management of the health care system used by members of the military. Applicant must be deemed suitable to be entrusted with personally identifiable information (PII) associated with the health care system's constituents. Applicant was hired by his current employer in April 2013. (Answer; Gx. 3)

Applicant is not married. After he graduated from college in May 2003, he worked as a clinical counselor for a state mental health agency. In 2006, he left that job to attend law school in another state. He financed his education and living expenses

¹ Required by the Regulation, as amended, and by DOD Directive 5220.6, as amended (Directive).

² The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ Ax. C is a two-page printout of Applicant's online job search activities; Ax. D is a four-page account statement of a loan taken to repay the student loan debt alleged at SOR 1.i; and Ax. E is a six-page exhibit showing status of a student loan rehabilitation program and Applicant's payments thereto for the debts alleged at SOR 1.a - 1.g and 1.k. Department Counsel's memorandum responding to Applicant's post-hearing submission and waiving objection is included as Hx. 2.

through a series of public and private student loans and a line of credit. The public loans are alleged at SOR 1.g and 1.k. The private loans are alleged at SOR 1.a - 1.f. Additionally, Applicant obtained private commercial loans to cover his expenses. Those are alleged at SOR 1.d, 1.h, 1.j, and 1.m. Applicant received one student loan, alleged at SOR 1.l, directly from his school, and he obtained one credit card after he graduated. That debt is alleged at SOR 1.i. All of these accounts became delinquent after Applicant graduated in 2009 and exhausted his forbearance and deferment options. Applicant was unable to obtain consistent, meaningful employment for the almost four years after he graduated. (Answer; Gx. 1 - 4; Tr. 30 - 31)

In 2009, Applicant studied for and passed his state's bar exam. From 2009 until he was hired by his current employer, Applicant worked in a variety of full-time and part-time jobs or was unemployed as he searched for work in the legal field. He was supported by his parents, with whom he lived until 2013, when he rented the apartment where he has lived since starting his current job. (Gx. 1; Gx. 3; Ax. A; Ax. C; Tr. 31 - 32)

Applicant is paid \$9.30 hourly and earns about \$19,000 annually through his current employment. From an average monthly net income of just under \$1,500, Applicant is able to pay his rent and all other monthly obligations as required. He has not incurred any new unpaid debts since the end of 2012. Once Applicant became steadily employed, he was able to enroll, in April 2014, in an income-based student loan rehabilitation program to bring current the student loans listed in SOR 1.a - 1.g and 1.k. He also obtained a loan to repay the school loan alleged at SOR 1.l, and he has been repaying that loan since 2009. Applicant has made all of his loan and rehabilitation payments as required. However, his payments on his student loans leave very little remaining with which to pay his other debts. (Answer; Gx. 3. Ax. D; Ax. E; Tr. 32 - 33, 37 - 38, 43 - 45)

Applicant has an excellent reputation at work for initiative, hard work, dedication, honesty, and reliability. Since 2009, he has worked without incident in jobs that require he exercise fiduciary responsibilities when handling other people's money. Applicant fully disclosed all of his financial problems when he submitted his EQIP. At his hearing, he was candid and forthright about his finances, and he was sincere in his stated intentions to continue his debt resolution efforts. (Answer; Gx. 1; Gx. 3; Ax. B; Tr. 33 - 34)

Policies

Positions designated as ADP I/II/III⁴ are classified as "sensitive positions."⁵ In deciding whether a person should be assigned to an ADP position, it must be determined that his or her loyalty, reliability, and trustworthiness are such that it is

⁴ As defined in Chapter 3 and Appendix 10 of DOD Regulation 5200.2-R, as amended (Regulation).

⁵ Regulation, ¶ C3.6.15.

“clearly consistent with the interests of national security” to do so.⁶ The Regulation also requires that DOD contractor personnel are entitled to the procedural protections in the Directive before any adverse determination may be made.⁷ Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁸ and must include consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines.

Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of eligibility for a position of trust.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a position of trust for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one is entitled to a position of trust, an applicant bears a heavy burden of persuasion.

A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring applicants possess the requisite judgment, reliability, and trustworthiness of one who will protect sensitive information as his or her own. Any reasonable doubt about an applicant's suitability for access should be resolved in favor of the Government.

⁶ Regulation, ¶ C6.1.1.1.

⁷ Regulation, ¶ C8.2.1.

⁸ Directive. 6.3.

Analysis

Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a trustworthiness concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows Applicant has been unable, not unwilling, to repay his past-due debts.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

(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; and

(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.

Both of these mitigating conditions apply. Applicant's financial problems arose because, after Applicant graduated from law school, he was unable to find work that enabled him to repay his student loans and other debts. Despite those circumstances, in 2009 Applicant started repaying a student loan from his law school (SOR 1.I) using whatever money he earned while living with his parents until 2013. After beginning his current job in 2014, he enrolled in a student loan rehabilitation program and has been making regular monthly payments, based on his ability to pay, since April 2014. He again is in good standing with his student loan creditors. Unfortunately, his remaining SOR debts require payments he currently is unable to make.

Applicant has demonstrated over the past two years that he is reliable and trustworthy. His efforts to find work and to resolve his financial problems have been

made in good-faith, and it is unlikely he will act irresponsibly or illegally to pay his debts. The record supports application of the mitigating conditions at AG ¶¶ 20(a) - (c), and the trustworthiness concerns raised by Applicant's financial problems are mitigated.

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Specifically, I note Applicant's response to his financial problems, his complete candor about those problems, and his record of trustworthiness, hard work, and reliability. Applicant did not mismanage his money; he lives a frugal lifestyle, and there is no indication of misconduct. A fair and commonsense assessment of all available information shows that the Government's concerns about Applicant's trustworthiness have been satisfied.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a - 1.m: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to occupy a position of trust. Applicant's request for ADP eligibility is granted.

MATTHEW E. MALONE
Administrative Judge