



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



In the matter of:)
)
 -----) ADP Case No. 14-06987
)
 Applicant for Public Trust Position)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for a public trust position. He has a problematic financial history based primarily on a lengthy period of unemployment during 2012–2014, and he has since made a good-faith effort to put his fiscal house in order. He presented sufficient evidence to explain and mitigate his financial difficulties. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted two Questionnaires for National Security Positions (SF 86 Format) on April 18, 2014, and February 4, 2015.¹ On July 10, 2015, after reviewing the applications and information gathered during a background investigation, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), as amended, detailing a trustworthiness concern under Guideline F for financial

¹ Exhibit 1 and Exhibit F.

considerations.² The action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (Jan. 1987), as amended (Regulation); and the adjudicative guidelines (AG)³ implemented by the DOD on September 1, 2006.

Applicant answered the SOR on or about August 10, 2015, and he requested a hearing. The case was assigned to me on December 1, 2015. The hearing was held as scheduled on January 20, 2016. Department Counsel offered Exhibits 1–3, and they were admitted. Applicant offered Exhibits A–V, and they were admitted. Other than Applicant, no witnesses were presented. The hearing transcript (Tr.) was received on January 29, 2016.

Rulings on Procedure

The SOR was amended to correct the case caption to show it is a public trust case, not a security clearance case.⁴ In addition, the SOR was amended to state that the tax lien in SOR ¶ 1.f is a state tax lien, not a federal tax lien.⁵

Findings of Fact

Applicant is a 39-year-old senior analyst for a health-care contractor to the Defense Department.⁶ His educational background includes a bachelor's degree. He has never married and has no children. He is seeking to obtain eligibility to occupy a position of public trust for his current job responsibilities. Eligibility is necessary because his job involves access to sensitive but unclassified information.

Applicant's employment history includes a lengthy period of unemployment. He was employed by a consulting firm and its successor-in-interest during 2006–2012. In June 2012, he left his job as a senior consultant for a new opportunity. The new job lasted until the end of August 2012, when he left under a mutual agreement with his employer following notice of unsatisfactory performance. He was then unemployed for about 21 months. He had a short-term position in June 2014, and he began his current job in July 2014. Due to unemployment, Applicant was unable to pay recurring bills, he

² The SOR was issued by the DOD Consolidated Adjudications Facility, Fort Meade, Maryland. It is a separate and distinct organization from the Defense Office of Hearings and Appeals, which is part of the Defense Legal Services Agency, with headquarters in Arlington, Virginia.

³ The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

⁴ Tr. 15–16.

⁵ Tr. 48–50.

⁶ Exhibits G and H.

was unable to afford rent, and he was homeless for a period.⁷ Applicant began at a salary of about \$88,000 when he returned to the workplace in 2014,⁸ and he now earns a salary of about \$95,000.

The allegations in the SOR fall into the following categories: (1) tax problems as reflected by a state tax lien for \$2,997 filed in December 2011, and failure to file a state income tax return in 2009; (2) a student loan account in collection for nearly \$100,000; (3) an unpaid judgment for \$1,620 obtained in 2008; and (4) ordinary collection or charged-off accounts for a total of \$2,063. These matters are addressed below.

Applicant paid off the state tax lien and obtained a release thereof in July 2014.⁹ He filed the 2009 state income tax return in May 2014.¹⁰ He also rehabilitated the student loan account, and it is in good standing with a balance of about \$186,000.¹¹

Applicant explained the unpaid judgment for \$1,620 stems from an apartment lease, and he disagrees with the total amount owed.¹² He also explained that he paid \$850 by forfeiture of his security deposit. The judgment does not appear on Applicant's 2015 and 2016 credit reports.¹³

The \$537 collection account in SOR ¶ 1.b is established by a December 2014 credit report (account # 41451XXX).¹⁴ The debt is not reported in more recent credit reports from 2015 and 2016.¹⁵

Applicant recalls paying the \$50 collection account in SOR ¶ 1.c stemming from an NSF check, although he does not have proof of payment.¹⁶ The debt is not reported in more recent credit reports from 2015 and 2016.¹⁷

⁷ Tr. 39–40.

⁸ Exhibit H.

⁹ Exhibit L.

¹⁰ Exhibit E.

¹¹ Exhibits B and I.

¹² Tr. 46–47.

¹³ Exhibits A, T, and U.

¹⁴ Exhibit 2 at 2.

¹⁵ Exhibits A, T, and U.

¹⁶ Tr. 44-45.

¹⁷ Exhibits A, T, and U.

The \$891 charged-off account in SOR ¶ 1.d is established by a December 2014 credit report (account # 54889XXXXXX).¹⁸ Applicant believes this debt is a duplication of the collection account in SOR ¶ 1.b, but the account numbers are not similar.¹⁹ The debt is not reported in more recent credit reports from 2015 and 2016.²⁰

The \$475 collection account in SOR ¶ 1.g is in dispute.²¹ Applicant submitted a written dispute of this account in June 2014.²² The debt is not reported in more recent credit reports from 2015 and 2016.²³

The two \$55 collection accounts in SOR ¶¶ 1.h and 1.i stem from unpaid traffic tickets.²⁴ Applicant paid those accounts in 2014.²⁵ He also presented proof of payment of other traffic tickets.²⁶

In addition to the debts in the SOR, Applicant presented proof of payment of a \$632 collection account (account # XXXX-XXXX-XXXX-9930) in October 2014 with a payment of \$651.²⁷ The debt is listed in a May 2014 credit report as a collection account with a high credit of \$632 and a balance of \$0, because it was charged off and sold to a collection agency that Applicant ultimately paid.²⁸ Likewise, Applicant paid a \$652 collection account (account # 1797XXXX), as reflected in credit reports from May 2014 and December 2014.²⁹ Applicant may have confused these two accounts with the debts in SOR ¶¶ 1.b and 1.d. He believes the latter two debts were paid, but documentary proof is lacking.

¹⁸ Exhibit 2 at 2.

¹⁹ Tr. 45–46.

²⁰ Exhibits A, T, and U.

²¹ Tr. 51.

²² Exhibit M.

²³ Exhibits A, T, and U.

²⁴ Exhibit 3.

²⁵ Exhibits D, N, and O.

²⁶ Exhibits P, Q, R, and S.

²⁷ Exhibits J and K.

²⁸ Exhibit 3 at 5.

²⁹ Exhibit 3 at 5, and Exhibit 2 at 2.

Applicant described his current financial situation as “good.”³⁰ His credit reports from 2015 and 2016 reflect credit scores of 672 and 688, which are considered “good.”³¹ In January 2016, he obtained initial approval of a mortgage loan to purchase a home.³² He stated he has a savings account with a balance of about \$3,000, and he estimated having about \$1,700 in checking.³³

Discussion

Under Guideline F for financial considerations,³⁴ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.³⁵ The overall concern is:

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.³⁶

The concern is broader than the possibility that a person might knowingly compromise sensitive information to obtain money or something else of value. It encompasses concerns about a person’s self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

³⁰ Tr. 54.

³¹ Exhibits A and T.

³² Tr. 54–56, and Exhibit V.

³³ Tr. 57–58.

³⁴ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

³⁵ ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that “the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.”) (citation omitted); and see ISCR Case No. 07-09966 (App. Bd. Jun. 25, 2008) (In security clearance cases, “the federal government is entitled to consider the facts and circumstances surrounding an applicant’s conduct in incurring and failing to satisfy the debt in a timely manner.”) (citation omitted).

³⁶ AG ¶ 18.

The evidence supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F.³⁷ In addition to the delinquent debts, Applicant fell behind on his state income tax obligations, including failing to timely file returns.³⁸

In mitigation, I have considered six mitigating conditions under Guideline F.³⁹ The following are most pertinent:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or death, divorce, or separation), and the [person] acted responsibly under the circumstances;

AG ¶ 20(c) . . . there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the [person] initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

I am persuaded that Applicant's problematic financial history is based for the most part on a lengthy period of unemployment during 2012–2014, and he has since made a good-faith effort to put his fiscal house in order. After enduring a difficult period of unemployment, he acted responsibly under the circumstances by beginning to address his financial issues upon his return to work in 2014. He resolved the tax issues, and he rehabilitated the student loan account, which is now in good standing. Those are high priority debts, and he receives substantial credit for resolving those matters. He disputes one collection account, he paid collection accounts associated with traffic tickets, and he paid two collection accounts not alleged in the SOR. He has additional work to do in resolving the unpaid judgment and collection accounts for a relatively small sum of money. Although he did not present a perfect case in mitigation, there are clear indications that his problematic financial history is being resolved and is under control.

To conclude, the record evidence leaves me with no doubt or concern about Applicant's eligibility and suitability for a public trust position. I am persuaded that Applicant acted in a reasonable and responsible way in dealing with financial problems after a lengthy period of unemployment. His overall financial situation is improving. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I gave due

³⁷ AG ¶ 19(a) and (c).

³⁸ AG ¶ 19(g).

³⁹ AG ¶ 20(a)–(f).

consideration to the whole-person concept.⁴⁰ For all these reasons, I conclude Applicant mitigated the financial considerations concern.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a–1.j: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard
Administrative Judge

⁴⁰ AG ¶ 2(a)(1)–(9).