



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



In the matter of:)
)
-----) ADP Case No. 15-00260
)
Applicant for Public Trust Position)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/06/2016

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny him eligibility for a public trust position. He did not present sufficient evidence to explain and mitigate the concern stemming from his problematic financial history, which is unresolved and ongoing. With that said, he did not deliberately omit relevant information about his financial problems when he completed a 2013 security questionnaire. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 Format) on October 30, 2013.¹ About two years later on August 31, 2015, after reviewing the questionnaire and information gathered during a background investigation, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR) detailing trustworthiness concerns under Guideline F for financial considerations

¹ Exhibit 3.

and Guideline E for personal conduct.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 replied to the SOR on October 16, 2015.

Neither Applicant nor Department Counsel requested a hearing, and so the case will be decided on the written record. On January 30, 2016, Department Counsel submitted all relevant and material information that could be adduced at a hearing.⁴ The file of relevant material (FORM) was mailed to Applicant, who received it on February 11, 2016. He has not replied to the FORM. The case was assigned to me on May 24, 2016.

Ruling on Evidence

Department Counsel's FORM includes Exhibit 5, which is a report of investigation (ROI) summarizing Applicant's interview that took place during the December 2013 background investigation. The summary, Exhibit 5, is not authenticated as required under ¶ E3.1.20 of the Directive. Department Counsel's written brief includes a footnote advising Applicant that the summary was not authenticated and that failure to object may constitute a waiver of the authentication requirement. Nevertheless, a *pro se* applicant's failure to respond to the FORM does not equate to a knowing and voluntary waiver of the authentication requirement.⁵ The written record does not demonstrate that Applicant understood the concepts of authentication, waiver, and admissibility. It also does not establish that he understood the implications of waiving an objection to the admissibility of the ROI. Accordingly, Exhibit 5 is inadmissible and I have not considered the information in the ROI.

Findings of Fact

Applicant is a 41-year-old help-desk analyst for a health-care contractor to the Defense Department. He has worked for his current employer since 2013. His employment history includes two periods of unemployment, the first from November

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 The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which are identified as evidentiary exhibits in this decision.

⁵ See *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009), for a definition of waiver.

2011 to May 2012, and the second from May 2013 to July 2013.⁶ His educational background includes a high school diploma. He has been married and divorced twice. He 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. The information is sensitive because it often contains personally identifiable information, commonly referred to as PII.

The SOR allegations consist of 32 delinquent accounts for a total of about \$65,200. Twenty-three of those accounts are medical collection accounts for about \$56,000. Nine accounts are charged-off or collection accounts for about \$9,000.

The SOR allegations are established by credit reports from 2013, 2014, and 2015.⁷ In his answer to the SOR, he noted that most of the delinquent accounts were for medical bills due to injury and a period of hospitalization when he was unemployed and had no income. He explained that he tried to obtain government assistance, but was denied. He noted the other delinquent accounts were old. Both in reply to the SOR and the FORM, he did not submit documentation showing that any of the 32 delinquent debts were paid, settled, in a payment plan, disputed, cancelled, forgiven, or otherwise resolved.

In Section 26 of his 2013 security questionnaire, Applicant did not disclose any of the delinquent debts in response to the relevant questions. In his answer to the SOR, he explained that because he completed the questionnaire nearly two years ago, he did not recall why he failed to report his negative credit history. He further stated that he was surprised when he learned he had answered the relevant questions in the negative when those answers were clearly wrong. He stated it would not make sense to do so when he knew a credit report would be reviewed during the background investigation. He denied any intention to lie or deceive, and he attributed his incorrect answers to an honest mistake.

Discussion

Personal conduct under Guideline E⁸ is a concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly handle and safeguard sensitive information. The suitability of an applicant may be questioned or put into doubt when an applicant engages in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations. Of special interest is any failure by an applicant to provide truthful and candid answers during the process or a failure to cooperate with the process.

⁶ Exhibit 3.

⁷ Exhibits 4, 6, and 7.

⁸ AG ¶¶ 15, 16, and 17 (setting forth the concern and the disqualifying and mitigating conditions).

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement in official governmental matters is a concern. Deliberate means knowingly and willfully. In other words, the omission, concealment, or falsification must be done consciously and intentionally. An omission of relevant and material information, for example, is not deliberate if the person genuinely forgot about the matter, inadvertently overlooked it, misunderstood the question, thought the information did not need to be reported, or otherwise made an honest mistake.

Applicant is denying the falsification allegation in SOR ¶ 2.a, which alleged that he deliberately failed to report his numerous delinquent accounts in his 2013 security questionnaire. He explained, in reply to the SOR, that he did not recall why he completed the questionnaire as he did, and he attributed his incorrect answers to an honest mistake. His explanation is not fanciful, disingenuous, or incredible on its face. I conclude his omission was not deliberate. Accordingly, the falsification allegation is decided for Applicant.

Under Guideline F for financial considerations,⁹ 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.¹⁰ 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.¹¹

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.

⁹ AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

¹⁰ 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).

¹¹ AG ¶ 18.

The written record supports a conclusion that Applicant has a problematic financial history within the meaning of Guideline F.¹² I have also considered six mitigating conditions under Guideline F,¹³ and the following are most pertinent:

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 [person's] current reliability, trustworthiness, or good judgment; and

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.

I am persuaded that Applicant experienced financial problems due to a combination of unemployment and uninsured medical expenses. The vast majority of the delinquent accounts in the SOR are medical collection accounts. Those matters receive less weight in my analysis because the debts were incurred for necessary medical care and treatment. The debts were not incurred due to frivolous or irresponsible spending, consistent spending beyond one's means, or financial problems linked to drug abuse, alcoholism, gambling, or other issues of concern. Accordingly, the concern stemming from the medical collection accounts is decided for Applicant.

Nevertheless, the nine charged-off or collection accounts for about \$9,000 are wholly unresolved. Applicant has provided no documentation for those debts, and it appears he has made no effort to resolve them. Likewise, he did not submit documentation establishing a reasonable plan to resolve the debts in the foreseeable future. Accordingly, the concern stemming from the charged-off or collection accounts is decided against Applicant.

Because Applicant chose to have his case decided on the written record, I am unable to evaluate his demeanor or sincerity. He also chose not to respond to the FORM with relevant and material facts about his circumstances, which may have helped to rebut, extenuate, mitigate, or explain the concern.

The concern over Applicant's problematic financial history creates doubt about his current reliability, trustworthiness, good judgment, and ability to protect sensitive information. 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 consideration to the whole-person concept.¹⁴ Accordingly, I conclude

¹² AG ¶ 19(a) and (c).

¹³ AG ¶ 20(a)–(f).

¹⁴ AG ¶ 2(a)(1)–(9).

that he did not meet his ultimate burden of persuasion to show that it is clearly consistent with the interests of national security to grant him eligibility for access to sensitive information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b–1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f–1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j–1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraphs 1.q–1.aa:	For Applicant
Subparagraphs 1.bb–1.ff:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Michael H. Leonard
Administrative Judge