



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



In the matter of:)
)
) ADP Case No. 15-01657
)
Applicant for Public Trust Position)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2016

Decision

DAM, Shari, Administrative Judge:

Applicant’s financial problems began in 2011 and continue to the present. He failed to present sufficient evidence to mitigate the financial trustworthiness concerns. Based upon a thorough review of the pleadings, exhibits, and testimony, eligibility for access to ADP I/II/III sensitive information is denied.

Statement of the Case

On June 6, 2014, Applicant submitted a public trust position application (SF 85P). On September 11, 2015, the Department of Defense Consolidated Adjudicative Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended (Regulation); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 14, 2015 (Answer), and requested a hearing before an administrative judge. The Department of Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on January 21, 2016, and re-assigned it to me on February 2, 2016. DOHA issued a Notice

of Hearing on February 12, 2016. I convened the hearing as scheduled on February 29, 2016. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through E into evidence. All exhibits were admitted without objections. DOHA received the transcript of the hearing (Tr.) on March 10, 2016. The record remained open until March 21, 2016, to give Applicant an opportunity to submit other exhibits. That date was extended to April 5, 2016, per Applicant's request. He did not subsequently submit additional exhibits.

Findings of Fact

In his Answer, Applicant admitted the 10 allegations contained in SOR. His admissions are incorporated into these findings.

Applicant is 26 years old and married for five years. He and his wife have two young children. He has earned a few college credits. After completing high school he enlisted in the Army in February 2008. He served on active duty until June 2012. He was a sergeant, E-5. He deployed to the Middle East for one year and received a Combat Action Badge and a Purple Heart Medal while there. He worked as a in military police officer. He held a security clearance while serving. He received a general discharge under honorable conditions, as a consequence of being charged with driving while intoxicated (DWI). (Tr. 15-17, 19-20, 27; GE 1.)

Applicant's financial difficulties began after he left the Army. He was unemployed from June 2012 to October 2012, and for a period in 2013 when he worked for a temporary agency. He had taken out some loans while in the military and once he left the service, he did not have a decent, steady income and was unable to pay those loans. His wife stayed home to care for their young children until recently, further reducing their income.

In August 2014 Applicant obtained his current position with a federal contractor. He said he has received a promotion and customer appreciation awards. (Tr. 18-19.) His supervisor is aware of this hearing and the financial issues that underlie it. (Tr. 21.)

Based on credit bureau reports (CBR) from July 2014, December 2014, August 2015, and February 2016, the SOR alleged 10 delinquent debts totaling \$21,410, which accumulated between 2011 and 2013. (GE 2, 3, 4, 5.) Applicant is resolving the \$776 debt (SOR ¶ 1.e) with three payments of \$256. He made the first one on February 29, 2016, the date of his hearing. None of the other nine debts are paid or being resolved. The two largest debts are automobile repossessions: SOR ¶ 1.d for \$7,633, delinquent since 2011; and SOR ¶ 1.f for \$6,667, delinquent since 2013.¹ Applicant was making payments on one vehicle listed in SOR ¶ 1.f, but stopped because the car needed a new transmission and other repairs, and he did not have enough money to make the \$450 monthly payments or the repairs. It was subsequently repossessed. (Tr. 35.) The other debts include two medical debts, three utility bills, and two miscellaneous debts.

¹ The original amount of the debt listed in SOR ¶ 1.d was \$19,961. The original amount of the debt listed in SOR ¶ 1.f was \$13,143. (GE 2.)

Applicant testified that his hourly rate just increased from \$18 to \$19 because he started working a night shift. His net monthly income is now about \$2,694, and includes a disability payment of \$260 from the Veterans Affairs (VA). His monthly expenses are \$2,351, leaving about \$343 remaining. (Tr. 24; AE C.) He recently took a part-time spring coaching position with a local high school. He will earn \$2,500 for the coaching season, which he intends to use to resolve delinquent debts. His wife just started a position and earns \$12 an hour. (Tr. 22-23.) Her salary is not included in the budget he provided, but he estimated it would add an additional \$1,600 per month. (Tr. 25-26.) He said that he has not had enough money to pay delinquent debts until his wife started working a couple weeks ago. (Tr. 31.)

Applicant intends to pay his delinquent debts as money becomes available. (Tr. 45.) He plans to contact the creditors for the repossessed automobiles and try to negotiate a settlement or monthly payments. (Tr. 42, 52.) He presented evidence that he paid off a \$5,154 student loan in January 2016, after making small monthly payments for many months. (GE 5; AE B.) He paid off a military charge card in 2013. (Tr. 49.)

Applicant has not participated in financial or credit counseling, but stated that a month ago he contacted a debt consolidation company to inquire about their program for managing delinquent debts. He decided not to employ the company because at the time his wife did not have a job and they could not afford the monthly payments of \$232 for 48 months. (Tr. 51.) While discussing the debts, he acknowledged that he has not contacted any of the creditors, including those relating to two medical bills that may be covered through his medical insurance.

Policies

Positions designated as ADP I, II, and III are classified as “sensitive positions.” (Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” (Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. DOD contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (Regulation ¶ C8.2.1.)

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s eligibility for access to sensitive information.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to sensitive information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to protected information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.²

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant began accumulating delinquent debts in 2011, which he has been unable or unwilling to satisfy to date. The evidence raises both of the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from Applicant's financial difficulties:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Because Applicant's debts are ongoing, the evidence does not establish mitigation under AG ¶ 20(a). After leaving the Army in June 2012, he experienced some periods of unemployment and underemployment, and his wife did not work because of their young children. Those may have been circumstances beyond his control. However, he did not produce evidence to demonstrate that he attempted to manage the debt while it was accumulating, or take other responsible action, which proof is necessary to establish full mitigation under AG ¶ 20(b). There is no evidence that he participated in credit or financial counseling or that his financial problems are under control at this time. Thus, AG ¶ 20(c) does not apply. He provided evidence that on the day of the hearing he made the first payment of three on the debt alleged in SOR ¶ 1.e. He established minimal mitigation under AG ¶ 20(d) as to that debt. Applicant did not dispute any of the alleged debts. 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 public trust position by considering the totality of the Applicant's conduct and relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an intelligent 26-year-old man, who enlisted in the Army in 2008 after graduating from high school. While deployed, he served in combat and received the Purple Heart Medal for a combat-related injury. Subsequent to leaving military service, he encountered significant financial difficulties that underlie this investigation. While he has taken the first steps to achieve financial stability, including paying some debts not listed on the SOR, he has not yet established a reliable track record of responsibly managing his financial issues. The SOR was issued in September 2015 and the hearing was held at the end of February 2016, about five months later. In the interim, Applicant contacted only one creditor, and made a payment to that creditor on the day of the hearing. After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole-person, the record evidence leaves me with doubt as to Applicant's eligibility and suitability for a position of trust. For these reasons, I conclude that

Applicant did not mitigate the trustworthiness concerns arising under the guideline for financial considerations.

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 through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to ADP I/II/III sensitive information is denied.

Shari Dam
Administrative Judge