



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



In the matter of:)
)
) ADP Case No. 15-00232
)
Applicant for Position of Trust)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate trustworthiness concerns under Guideline F, financial considerations. Eligibility to occupy a position of trust is denied.

Statement of the Case

On July 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F. DOD CAF took that action under DOD 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant's access to sensitive information. On October 3, 2015, Applicant answered the SOR and requested a hearing. This case was assigned to me

on January 7, 2016. On February 2, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for February 24, 2016. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibit (AE) A. Applicant's objection to GE 2 was overruled. All other exhibits were admitted into evidence without objection. The record was left open until March 9, 2016, for Applicant to submit additional matters. No additional matters were submitted. The transcript (Tr.) of the hearing was received on March 3, 2016.

Procedural Matter

Department Counsel moved to withdraw SOR ¶ 1.p. Applicant had no objection. The motion was granted and the allegation was withdrawn.¹

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has been working for his current employer since 2013. He graduated from high school in 2001 and earned a bachelor's degree in 2008. He has never been married and has a child who is eight years old. He has been occupying a position of trust in his current position.²

Excluding the withdrawn allegation, the SOR alleged that Applicant had 16 delinquent debts totaling \$23,288 (SOR ¶¶ 1.a – 1.o, 1.q). In his Answer to the SOR, he denied the allegation in SOR ¶ 1.m and admitted the remaining allegations. His admissions are incorporated as findings of fact.³

Applicant attributed his financial problems to periods of unemployment and medical problems. He was unemployed from March 2012 to June 2012 after being fired from a part-time job and was unemployed March 2009 to April 2010 after being laid off from a part-time job. He was also unemployed from August 2003 to July 2004 while he attended college.⁴

SOR ¶¶ 1.a – 1.h. These are eight charged-off student loans that total \$18,442. Applicant testified that he was trying to establish a repayment plan for the student loans. He stated that he contacted the creditor in October 2015, advised the creditor he could only afford to pay \$50 per month, but indicated the creditor wanted larger payments. He

¹ Tr. 40, 50.

² Tr. 6-7, 20-21; GE 1, 4.

³ Applicant's Answer to the SOR.

⁴ Tr. 31-32, 38-40, 43-44; GE 1, 4.

testified that he had been paying \$50 per month toward these debts, but provided no proof of those payments. Applicant's credit reports reflected that he had student loans that were in deferment status until January 16, 2016. From the evidence provided, it cannot be determined whether the charged-off student loans were placed in a deferment status. Applicant has presented insufficient evidence to show that the alleged student loans are resolved or are being resolved.⁵

SOR ¶¶ 1.i and 1.o. These are delinquent medical bills totaling \$1,538. He testified that he contacted both creditors and set up a repayment plan for one bill, but had not yet such a plan for the other. He provided no proof of the repayment plan or payments under that plan. Insufficient evidence was presented to establish that these debts are being resolved.⁶

SOR ¶¶ 1.j and 1.n. These are delinquent accounts totaling \$1,431. Applicant provided no proof of payments or payment arrangements for these debts. They remain unresolved.⁷

SOR ¶¶ 1.k, 1.l, 1.m, and 1.q. These are delinquent consumer debts totaling \$2,215. Applicant claimed he disputed these debts. He testified the balances for two of the debts (SOR ¶¶ 1.k and 1.l) were incorrect and other two debts were not his responsibility (SOR ¶¶ 1.m and 1.q). He provided no documentation to substantiate that he had a legitimate basis for disputing those debts.⁸

Applicant has not received any financial counseling. His annual salary is \$23,000. He indicated that his monthly expenses were about \$1,100. He has about \$500 in discretionary income each month.⁹

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See 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." (See Regulation ¶ C6.1.1.1.) In a memorandum dated November 19, 2004, the Deputy Under

⁵ Tr. 22-30, 42-44; GE 1-4; AE A. Applicant testified that the student loans alleged in the SOR were his "personal" student loans and the up-to-date student loans were his federal student loans. Tr. 24.

⁶ Tr. 31-32, 38-40, 42, 44-45; GE 2, 3; AE A. Applicant initially testified that he has not done anything to take care of the debt in SOR ¶ 1.i, but later testified he had a repayment plan for that debt.

⁷ Tr. 32, 38; GE 3.

⁸ Tr. 32-38, 40-42; GE 3.

⁹ Tr. 20-22, 44-46, 50-51; GE 2-4.

Secretary of Defense (Counterintelligence and Security) indicated that trustworthiness adjudications will apply the procedures contained in the Directive before making a determination. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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.

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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive information 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. The government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 sets forth the trustworthiness concern for financial considerations:

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. An individual who is financially

overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 action to resolve the issue.

Applicant experienced periods of unemployment and medical issues that contributed to his financial problems. However, he failed to establish that he acted responsibly under the circumstances. His financial problems are ongoing and significant. He presented no proof of payments or payment arrangement for the delinquent debts. In short, he failed to show that he has taken any meaningful steps to resolve his delinquent debts. He presented no documentation establishing he has a legitimate basis for disputing any of the debts. From the evidence presented, I am unable to find that his financial problems are being resolved, are under control, and are

unlikely to recur. His financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.¹⁰ In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet his burden of persuasion. His handling of his financial problems leaves me with doubts about his current eligibility to occupy a position of trust. Following the “clearly consistent with national interest” standard, doubt about granting Applicant eligibility for a position of trust must be resolved in favor of national security.

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.o:	Against Applicant
Subparagraph 1.p:	Withdrawn
Subparagraph 1.q:	Against Applicant

¹⁰ The nine adjudicative process factors listed at AG ¶ 2(a) 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.

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility to occupy a position of trust. Eligibility to access sensitive information is denied.

James F. Duffy
Administrative Judge