



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



In the matter of:)	
)	
)	ADP Case No. 15-00457
)	
)	
Applicant for Public Trust Position)	

Appearances

For Government: Carroll Connelley, Esquire, Department Counsel
For Applicant: *Pro se*

May 24, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January of 1987.

Applicant submitted his Questionnaires for Public Trust Position (SF 85P), on March 18, 2014. On July 30, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on September 8, 2015. A File of Relevant Material (FORM) was issued on October 15, 2015. Applicant did not respond to the FORM. I received the case assignment on January 7, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to sensitive information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a.~1.d, 1.h., 1.i. and 1.k. of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.e.~g. and 1.j. of the SOR. Furthermore, Applicant provided no additional information to support his request for eligibility for a public trust position.

Guideline F - Financial Considerations

Applicant is 28 years old, was awarded an “Associate’s” Degree in 2009, but when his “parents passed away in 7/2011 and 4/2012 . . . [he] chose to enter the workforce instead of pursuing a degree.” (Item 2 at pages 5, 12~13.)

1.a. Applicant admits that he failed to file his Federal and State income tax returns for tax years 2012 and 2013. As he has offered nothing further in this regard, this allegation is found against Applicant.

1.b. Applicant admits that he is indebted to Creditor B for a past-due debt in the amount of about \$403. As he has offered nothing further in this regard, this allegation is also found against Applicant.

1.c. Applicant admits that he is indebted to Creditor C for a past-due debt in the amount of about \$473. As he has offered nothing further in this regard, this allegation is found against Applicant.

1.d. Applicant admits that he is indebted to Creditor D for a past-due debt in the amount of about \$105. As he has offered nothing further in this regard, this allegation is found against Applicant.

1.e.~1.g. Applicant denies that he is indebted to Creditor E for past-due debts totaling about \$14,112. As he has offered nothing further in this regard; and as these past-due debts do appear on Applicant’s April 2014 credit report, these allegations are found against Applicant. (Item 4 at page 5.)

1.h. Applicant admits that he is indebted to Creditor H for a past-due debt in the amount of about \$470. As he has offered nothing further in this regard, this allegation is found against Applicant.

1.i. Applicant admits that he is indebted to Creditor I for a past-due debt in the amount of about \$374. As he has offered nothing further in this regard, this allegation is found against Applicant.

1.j. Applicant denies that he is indebted to Creditor J for a past-due debt in the amount of about \$230. As he has offered nothing further in this regard; and as this past-due debt does appear on Applicant's April 2014 creditor report, this allegation is found against Applicant. (Item 4 at page 9.)

1.k. Applicant admits that he is indebted to Creditor K for a past-due debt in the amount of about \$177. As he has offered nothing further in this regard, this allegation is found against Applicant.

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.) 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. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (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 over-arching 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. 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. 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 as to obtaining 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 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.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.))

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under AG ¶ 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has significant past-due debt. Finally, under AG ¶ 19(g), *“failure to file Federal, state, or local income tax returns as required”* may also raise security concerns. He has yet to file 2012 and 2013 Federal and State income tax returns. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate trustworthiness concerns arising from financial difficulties. However, I find no countervailing mitigating conditions that are applicable here. Applicant has done nothing to answer the Government’s concerns.

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 all the 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) 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 all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from his 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge