



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



In the matter of:)	
)	
REDACTED)	ADP Case No. 14-05351
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate trustworthiness concerns raised by his financial situation. Notwithstanding full-time employment since 2007, Applicant accumulated over \$20,000 in delinquent debt and has yet to take action to address his past-due debts. Eligibility to occupy a position of trust is denied.

History of the Case

On December 3, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant's circumstances raised trustworthiness concerns under the financial considerations guideline.¹ Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record (Answer).

On April 20, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains five documentary exhibits that are admitted into evidence, without objection, as exhibits (Ex.) 1 – 5. Applicant did not

¹ This action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive).

submit a response to the FORM within the allotted 30-day period, and the case was forwarded to the hearing office. I was assigned the case on July 1, 2015.

On July 2, 2015, I contacted the parties to provide Applicant a final opportunity to submit a response to the FORM. See Hearing Exhibit I. Applicant submitted a response, his performance reports, and two reference letters, which were marked and admitted into evidence, without objection, as Ex. A – C. The record closed on July 17, 2015.

Findings of Fact

Applicant, a naturalized U.S. citizen, has been working for his current employer since 2007. He earned a degree in computer programming in 1995, and is employed as a senior systems support analyst. His performance reports reflect that he generally exceeds his employer's expectations. His references write glowingly about his trustworthiness, reliability, and other pertinent character traits.

Applicant is married. As of the submission of his application for a position of trust (application), his wife was living in his country of birth and her petition to become a permanent U.S. resident was pending action by U.S. immigration authorities.

The SOR reflects seven delinquent accounts. Applicant denied the judgment debt in 1.a. He previously told a background investigator that the judgment was for past-due rent for an apartment he never lived in. He successfully disputed the debt and it does not appear on his most recent credit report, Ex. 5. He admits the remaining six delinquent debts totaling over \$20,000. He did not provide any information or documentation showing that he has taken action to resolve these past-due debts.

Applicant indicated on his application that he had retained a credit counseling service to help him resolve his past-due debts. During his background interview, he corrected the misimpression he gave in his application regarding the credit counseling service. Applicant told the investigator that he retained the credit counseling service in 2012, and was paying them \$100 a month to help him remove negative information from his credit reports and raise his overall credit score. Applicant further informed the background investigator that the credit counseling service was not assisting him in resolving his past-due debt, as the monthly service charge did not include this benefit.

Applicant states that he fell behind on his financial obligations helping his elderly and sick parents. His father passed away several years ago, but he continues to financially support his mother. One of his long-time references writes about Applicant financially supporting his parents. (Ex. B)

Policies

Positions designated as ADP I and ADP II are classified as sensitive positions. 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.²

When evaluating an applicant's eligibility for a position of trust, an administrative judge must apply the provisions of the Directive, to include the adjudicative guidelines (AG or guidelines).³ In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. An applicant, on the other hand, is responsible for presenting evidence to mitigate concerns arising from their conduct or circumstances. An applicant bears the ultimate burden of persuasion to establish their eligibility for a position of trust.⁴ In resolving questions about an applicant's eligibility for a public trust position, an administrative judge must resolve any doubt raised by an applicant's conduct or circumstances in favor of national security.⁵

Analysis

Guideline F, Financial Considerations

The concern regarding an individual who accumulates a substantial amount of delinquent debt is explained at 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 classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

² Directive, § 3.2. See also, ISCR Case No. 14-00590 at 3 (App. Bd. Dec. 10, 2014) ("The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination "may be granted only when 'clearly consistent with the interests of the national security'."). Cf. DOD Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended, ¶¶ C3.1.2.1.1.7, C3.1.2.1.2.3, C6.1.1.1.

³ Directive, Enclosure 2. See also, Memorandum from the Office of the Under Secretary of Defense for Intelligence, dated August 30, 2006, directing that the adjudicative guidelines be applied to all adjudications and other determinations made under the Directive and DOD Regulation 5200.2-R.

⁴ Directive, Enclosure 3, ¶ E3.1.14 – E3.1.15.

⁵ Directive, Enclosure 2, ¶ 2(b).

Applicant's accumulation of over \$20,000 in delinquent debt raises this concern. It also establishes AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

An individual's past or current indebtedness is not the end of the analysis, because a trustworthiness adjudication is not aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, Applicant may mitigate the concern by establishing one or more of the following mitigating conditions:

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 individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's current financial situation appears to stem from the financial sacrifices he has made to help his family. AG ¶ 20(b) partially applies. He also mitigated concerns initially raised by the judgement debt in SOR 1.a, which was listed on an earlier credit report, Ex. 4. AG ¶ 20(e) applies to this debt. However, Applicant's laudable efforts to assist his parents and evidence refuting one of the SOR allegations are insufficient to mitigate the concerns raised by his accumulation of over \$20,000 in delinquent debt. Applicant has been employed full time since 2007. Furthermore, he has been aware of the Government's concerns regarding his finances for some time and has yet to take action to address his past-due debts, to include three collection accounts of less than \$300. Each of these relatively minor debts remains unpaid. His financial situation remains a concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁶ I hereby incorporate my comments under Guideline F. I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's favorable character references and good work record. However, a significant amount of delinquent debt remains unresolved, and the serious trustworthiness concerns raised by such debt remain unmitigated. After weighing the favorable and unfavorable evidence, I conclude that Applicant failed to meet his burden in mitigating the financial considerations concern. Overall, the record evidence leaves me with doubts and questions about Applicant's eligibility for a public trust position.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.g:	Against Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the interest of national security to grant Applicant eligibility for a position of trust. Applicant's request for a public trust position is denied.

Francisco Mendez
Administrative Judge

⁶ The non-exhaustive list of factors 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.