



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

March 6, 2015

CERTIFIED MAIL
RETURN RECEIPT

Re: Petition for Award Eligibility Reinstatement: (R e s p o n d e n t) , DOI Case No.13-0025-00

This is to provide you with my decision as the U.S. Department of the Interior (DOI) Debarring Official in response to your correspondence seeking award eligibility reinstatement, dated January 13, 2015. I have considered the information contained in the official record. I conclude that, unfortunately, the information you present does not support reinstatement of award eligibility at this time.

I. **PROCEDURAL BACKGROUND.**

DOI proposed your debarment under 48 C.F.R. Subpart 9.4 for a three year period, by Notice dated August 19, 2013. DOI based the action upon the fact of your 2013 criminal conviction for theft of Government funds. The Notice included a copy of the Action Referral Memorandum (ARM) prepared by the DOI Office of Inspector General dated August 13, 2013, which set forth information about your offense and conviction. Under Subpart 9.4, the notice imposed preliminary immediate award ineligibility effective upon the date of notice issuance. You did not contest the notice. Consequently, DOI debarred you for a three year period measured from the August date of your initial award ineligibility, until close of business August 18, 2016.

By email dated January 29, 2015, David Sims, DOI Debarment Program Director, acknowledged DOI receipt of your January 13, 2015, petition and established a record completion schedule. The schedule accorded you the opportunity to provide a supplemental written submission to address the factors found at 48 C.F.R. § 9.406-1(a). You provided additional written information for the record by email submission dated January 31, 2015. By memorandum dated February 19, 2015, copied to you, the DOI Office of Inspector General (OIG) Administrative Remedies Division provided observations in response to your submission. The record closed with receipt of the OIG memorandum. The matter is ready for decision.

II. FACTUAL BACKGROUND.

The DOI Notice and ARM, and in particular the factual stipulation contained in your plea agreement (ARM Attachment 1), sets forth the facts about your offense. The United States Geological Survey (USGS) hired you in September 2010 to work as an Information Technology (IT) specialist in Lakewood, Colorado. In connection with the position you were issued a Government purchase and travel charge card to use for official travel and to purchase IT equipment for the organization.

Between March 2011 and May 15, 2012, you used your Government charge card to purchase items for your personal use rather than official use. You concealed the unauthorized purchases by altering item descriptions and shipping addresses on receipts to make it appear that you were purchasing IT equipment for USGS. A USGS charge card coordinator detected irregularities in May of 2012 and emailed you requesting purchase justifications. You initially denied making the purchases, but then admitted the improper purchase card use and receipts alteration. USGS removed you from Federal employment on August 17, 2012.

You were Indicted on December 4, 2012, on 38 counts of theft of Government funds, in violation of 18 U.S.C. § 641. On February 22, 2013, you entered a guilty plea to one count of theft under the Indictment. On June 1, 2013, the court convicted you. You were sentenced to probation for five years and ordered to make restitution in the amount of \$25,095.46. In August of 2013 DOI undertook debarment proceedings.

III. DISCUSSION.

Your January 13, 2015, letter seeks "reinstatement or partial reinstatement" of award eligibility. Discretionary debarment is Government wide and reciprocal in effect for purposes of Federal procurements and discretionary assistance, loan and benefit program (non-procurement) awards. Whether to terminate or continue your debarment is the only issue properly at issue in this instance. The question of modification of "extent of debarment," i.e., its scope or reach, is not pertinent for consideration here. This is not a case where, for example, limiting the scope to one product or another, or one unit of a business might be supported by the presence of new circumstances following the initial imposition of debarment. The second part of your request essentially seeks relief from ineligibility for one type of non-procurement award transaction precluded by debarment, in this instance a home refinance loan under Veterans Administration programs. Once debarment is imposed by one agency, questions and decisions with regard to participation in award transactions of other agencies during the period of debarment are the purview of the awarding agency rather than the debarring agency.

Under 48 C.F.R. § 9.406-4(c)(1) -(5), the Debarring Official may, upon receipt of a written request from a respondent, reduce the period of a debarment previously imposed for reasons such as newly discovered material evidence, reversal of the conviction or judgment upon which the debarment was based, a bona fide change in management or ownership of the debarred organization, elimination of other causes for which debarment was imposed, or "other reasons deemed appropriate." The burden rests with the respondent to demonstrate, and support by documentation, the existence of persuasive reasons for alteration of the debarment period.

You present no newly discovered evidence regarding the cause for your debarment; nor do you contend and document that your conviction has been reversed. The change in management or ownership criterion is inapplicable as you are an individual and it pertains only to organizations, Section 9.406-4(c)(4) "elimination of other causes ..." is not applicable as it refers to debarment actions based other than on the fact of a criminal or civil offense.

Under §9.406-4(c)(5) the Debarring Official may also act based on other reasons deemed appropriate. As you did not contest the 2013 debarment notice, debarment occurred without proceedings in which you could have presented information to address the mitigating factors and remedial measures criteria at §9.406-1(a). As part of the reinstatement proceeding submissions schedule you were provided with the opportunity to address those factors to the extent they may pertain to you as an individual. The information of record is considered below.

1. Fulfillment of the Court Imposed Sanctions.

The Court sentenced you to five years of probation and to make restitution. By your submissions you documented that you have made your restitution payment in full and have received early release from probation. An inherent degree of ameliorative impact may attach to the experience of criminal or civil prosecution and the fulfillment of court imposed sanctions. However, the mere fact of proceeding towards involuntary completion of a court imposed judgment, without more buttressing mitigation information, does not provide persuasive evidence of a presently altered attitude on your part as to business honesty and integrity that would support a decision that the protection provided by continuance of debarment is unnecessary at this time.

2. Self-disclosure of Misconduct and Cooperation with the Prosecution.

The act of voluntary self-disclosure of misconduct and extraordinary cooperation with an ensuing investigation and legal proceedings can speak to a person's present conformance with ethical standards of business conduct. The record indicates that you did not self-disclose the criminal conduct. During the course of your offense, which continued over a year, you sought to conceal the misconduct. The offense ended only when the USGS detected irregularities and asked you to document that the charges were legitimate.

You state in your January 31, 2015, supplemental written submission only that you cooperated with the investigation "without resistance." The underlying record in this matter presents a somewhat different picture. The factual stipulation in support of your plea states that you initially denied making illegal purchases, but some days later confessed to the purchases. It further appears from the plea agreement that you initially disclosed only \$15,784 in unauthorized purchases, while the ensuing investigation by the DOI OIG determined that the illegal purchases amounted to at least \$37,000. There is no information to indicate a lack of basic cooperation thereafter in the course of your prosecution. But, you present no information here that could show the presence of an extraordinary degree of cooperation beyond that level expected or required in the criminal proceeding which could reflect an inherent changed commitment to proper standards of honesty and integrity.

3. **Acknowledgement of the Seriousness of the Misconduct and Acceptance of Responsibility.**

The maximum statutory penalty under 18 U.S.C § 641 is not more than ten years imprisonment and a fine of up to \$250,000, or both. It appears from the terms of your conviction that the Court utilizing Federal criminal sentencing guidelines imposed a sentence at the lower end of the penalty scale.

The debarment remedy serves different objectives than that of the criminal justice process. Debarment, an administrative remedy, focuses on responsibility and accountability as to the potential for assessment of business risk to Government transactions posed by potential transaction participants rather than liability and punishment for criminal conduct.

Conviction for theft inherently raises a serious question about honesty and integrity. You indicated that you have no prior criminal history. However, in terms of responsibility and risk it is significant that the record indicates you initiated the illegal conduct that led to your conviction. You were not an ancillary, minor, or coerced participant in a scheme conceived and directed by others. The conduct was not limited to an isolated incident, as it continued for more than a year.

You committed your offense in the course of your USGS employment. All Federal employees issued a Government charge card are required to take training on proper card use, including the basic and readily understood fact that charge cards are for official use only. As a general premise, a higher standard of care and obligation attaches to the conduct of a public official regarding ethical standards and compliance with laws of the land. It is well stated that "public service is a public trust."

Whether a person acknowledges the seriousness of past misconduct and truly accepts responsibility factors into the decision on whether a potential business risk presently remains. You entered a guilty plea to resolve the criminal case without trial. The fact that you chose to plead guilty is considered with respect to its potential mitigation value in this debarment proceeding. Taken in context with other information of record, such an action can contribute to indices of acceptance of responsibility for illegal conduct and commitment to altered future conduct. However, without other persuasive supporting indicia of altered business attitude the action may reflect no more than self-interest in limiting the potential for significantly greater liability attendant on proceeding to trial.

You have now been debarred for approximately 18 months. A substantial amount of time has elapsed to permit your reflection upon the misconduct. Notwithstanding the passage of time, in your written submissions you characterize your criminal conduct merely as "making a horrible mistake" and one that has affected many facets of your life. You state "I fully understood the significance of the matter and was just trying to make things right by being truthful." But your submissions in support of debarment termination do not include clear, explanatory, statements that reflect a present self-awareness not merely of the adverse consequences of crime but more fundamentally of the threat that theft of Government resources by a Federal employee in the course of employment poses to mission activities and public confidence in the integrity of Federal program operations.

You also state in your January 31, 2015, supplemental written submission that over the past three and a half years there have been "overall changes made within [your] life..." You do not, however, specify the nature of those changes and how they could support a determination that continuation of your debarment is unnecessary. In sum, it appears from your written submissions that your request for reinstatement proceeds from an inability to qualify for a VA home loan while debarred rather than from reflection and arrival at altered standards of conduct.

The theft of Government funds by a Federal employee poses a clear threat to the integrity of Government program operations and public confidence in those operations. I cannot satisfactorily conclude from the information presented, that even at this point following a partial completion of the debarment period you truly recognize the seriousness of, and threat posed by, your criminal conduct. This assessment factors heavily into the determination that continuation of your debarment is warranted.

IV. CONCLUSION.

I understand that adverse economic consequences may occur following imposition of debarment. However, the responsibility of the Debarring Official is first and foremost one of prudent stewardship to protect the integrity of Government award programs. For the reasons set forth above, your submissions do not provide me with information to persuasively demonstrate the presence of altered personal standards of business honesty and integrity sufficient to support termination of your debarment at this time. Accordingly, your debarment, scheduled to conclude at close of business August 18, 2016, continues in effect.

Sincerely,

/signed/

Debra E. Sonderman, Director
Office of Acquisition and Property Management

cc: David M. Sims, PAM
Jim Weiner, SOL
Lori Vassar, OIG
Stanley Stocker, OIG
Official Case File