



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



In the matter of:)
)
) ADP Case No. 17-03503
)
Applicant for Public Trust Position)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: Pro se

12/07/2018

Decision

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, eligibility for a public trust position is denied. Applicant failed to present sufficient credible information to mitigate financial trustworthiness concerns. She presented sufficient information to mitigate alcohol consumption trustworthiness concerns.

Statement of the Case

On February 5, 2016, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain eligibility for a public trust position to work for a defense contractor. (Item 4) Applicant was interviewed by an agent from the Office of Personnel Management (OPM) on October 18, 2016, December 5, 2016, and May 27, 2017. (Item 5, Summary of Personal Subject Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense Consolidated Adjudication Facility (DOD CAF) could not make the affirmative findings required to grant Applicant access to sensitive information.

On October 23, 2017, the DOD CAF issued Applicant a Statement of Reasons (SOR) for financial and alcohol trustworthiness concerns under Guideline F and Guideline G. DOD took the action under DOD Manual 5200.02, Procedures for the DOD Personnel Security Program (PSP), and the adjudicative guidelines effective on June 8, 2017.

Applicant answered the SOR on November 20, 2017 (Item 2). She admitted four and denied two of the six allegations of financial trustworthiness concern. Under alcohol consumption, Applicant admitted that she was treated for an alcohol-induced liver disorder in 2015 and was advised by her doctor not to continue to consume alcohol. She denies the allegation that she continues to consume alcohol in spite of her doctor's recommendation. Applicant requested a decision on the record.

Department Counsel submitted the Government's written case on February 12, 2018. (Item 10). Applicant received a complete file of relevant material (FORM) on May 23, 2018, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. (Item 11) Applicant provided additional information in response to the FORM on June 6, 2018. (Item 12) On October 22, 2018, Department Counsel noted that she had no objection to consideration of the additional material. (Item 13) I was assigned the case on July 26, 2018.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 5) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the PSI summary. Applicant did not raise any objection to consideration of the PSI when she responded to the FORM. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings, I make the following findings of fact. Applicant is 55 years old. She married in 1981, but her husband passed away in 1993. She has one adult son. She has been employed by a company managing health care for DOD since 1999. (Item 4, e-QIP, dated February 5, 2016; Item 5, PSI, dated October 18, 2016)

The SOR alleges and credit reports (Item 6, dated February 17, 2016; Item 7, dated March 22, 2017; Item 8, dated January 11, 2018) confirm the following six delinquent debts: a student loan in collection for \$22,048 (SOR 1.a); a charge account in collection past due for \$221, on a total balance of \$1,334 (SOR 1.b); a credit card account in collection for \$1,300 (SOR 1.c); another credit card debt in collection for \$1,299 (SOR 1.d); a cable debt in collection for \$365 (SOR 1.e); and a television

service debt in collection for \$146 (SOR 1.f). In her response to the SOR, Applicant provided sufficient documentation to establish that she paid the two debts totaling \$511 at SOR 1.e and 1.f. The total amount of the debt she admitted for the remaining four debts is \$24,868 with the student loan debt at SOR 1.a, accounting for over 85% of the debt.

The alcohol consumption trustworthiness concern alleges that in December 2015, Applicant received medical treatment for an alcohol induced liver disorder diagnosed as alcohol abuse. (SOR 2.a) It was further alleged that Applicant continued to consume alcohol notwithstanding her doctor recommending that she abstain from alcohol consumption. (SOR 2.b)

Applicant reported the student loan debt on her e-QIP. In the PSI, Applicant noted that the student loan dates from her schooling in 1981. Since then, she had her pay garnished and made other payments on the debt until early 2010. She provided no documents to verify her assertions. She has not made any payments on the student loans since the account went delinquent in January 2010. In her response to the FORM, Applicant attached a request, dated May 18, 2018, that she submitted to have her student loan account deferred because of economic hardship. She has not received a response to her request.

In the PSI, Applicant also reported that she had a bank credit card account in collection. She stated that she opened the account in 2011 and used it to charge over \$1,000 in general purchases. She does not recall the balance and the date when the card went into default. There are two debts listed in the SOR that could relate to this account. Both are with the same creditor and for the approximate amount Applicant reported as the amount she charged on the credit card. While Applicant did not claim that the debts are duplicates, I find from the information on the credit reports that the debts at SOR 1.c and 1.d are duplications. Accordingly, I find for Applicant as to allegation 1.d. Applicant stated that she would contact creditors and make payments as soon as she could. Applicant did not present any additional information on any payments made on this debt.

At the PSI, Applicant discussed some other SOR debts. She knew some debts were charged off. She did not know she had to make payments on charged off accounts. She also reported that her present financial situation is fair and she is current paying her bills. She lives within her means and intends to pay her debt when she is able. She has not received financial counseling or used a debt consolidation service. (Item 5)

In her response to the FORM (Item 13), Applicant noted that she has no delinquent utility accounts. She further noted that her financial issues happened a long time ago, are unlikely to recur, and are being actively resolved. The only document Applicant presented in her response to the FORM was a May 18, 2018 request for deferment of the student loans for economic hardship reasons. (Item 12)

Applicant's medical records show that she reported moderate to heavy alcohol use to her doctor in 2015 and 2016. In December 2015, Applicant was advised by her doctor to seek alcohol counseling and treatment because of elevated liver enzymes. (Item 9 at 92) She voluntarily received treatment for three days in December 2015. (Item 9 at 67) Applicant was diagnosed with chronic alcohol abuse and alcohol-induced liver disorder, and was advised of the importance of discontinuing alcohol use. (Item 9 at 88) The medical records do not contain a clear statement from Applicant's doctor that she should not consume alcohol. In May 2017 during a physical examination, Applicant reported her consumption of alcohol as an occasional glass of wine. There were no reported alcohol-related incidents either at work or away from work.

In her response to the SOR, Applicant presented a letter from her doctor stating that there is no indication in her medical records to suggest that she is not capable of performing her present duties. The letter notes that she has sound judgment and no issues concerning substance abuse. (Exhibit C, Response to SOR) In her FORM response, Applicant emphasized that her alcohol consumption problems have been resolved, and she abstinent from alcohol consumption.

Policies

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 common sense decision. According to AG ¶ 2(a), 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 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. 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.

Analysis

Financial Considerations

There is a trustworthiness concern for a failure or inability to live within one's means, satisfy debts, and meet financial obligations, and may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulation, raising 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 or otherwise questionable acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has significant unresolved student loan and consumer debts. Her delinquent debts are established by credit reports and her admissions in the e-QIP and her response to the SOR. The debts pose a trustworthiness concern raising Financial Consideration Disqualifying Conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

I considered the following Financial Considerations Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) 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; and

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

These mitigating conditions do not apply. Applicant incurred student loan debt deliberately and freely to finance her education. She also deliberately, freely, and indiscriminately used consumer credit cards to purchase items. The financing of her education through student loans and use of credit cards are not unusual circumstances or beyond Applicant's control. Applicant's debts are numerous, have not been resolved so they are recent, and they were not incurred under circumstances making recurrence unlikely.

Applicant presented evidence that she resolved two small consumer debts for television and cable service. Her student loans date from 1981, and went delinquent in 2010. She presented a May 2018 request for deferment of the student loans for financial hardship reasons. The submission of a request for deferment over eight years after a debt became delinquent is not acting responsibly under the circumstances. Applicant did not present any evidence of her efforts to address and resolve her delinquent credit card debts. She stated in 2016 that she would contact the creditors. Two years later, she did not present any information of any arrangements, plans, or payments to the creditors.

Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free. All that is required is that Applicant act responsibly given her financial circumstances. Applicant must establish that she has a reasonable plan to resolve financial problems, and that she has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant only presented evidence of the payment of two small debts.

Applicant did not provide sufficient details about what she plans to do to address the remaining debts alleged in the SOR. She did not state that she had a plan to pay her debts. She did not provide documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of

debt resolution. She only presented a document requesting deferment of her student loans sent eight years after the loans went into default. There is insufficient evidence to establish why Applicant was unable to make any progress resolving his debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future.

Applicant's failure to establish payment of or a plan to pay her SOR debts student loan and credit card debts shows that she has not acted reasonably and honestly with regard to her financial duties and obligations. She is not managing her personal financial obligations responsibly. Her lack of reasonable and responsible actions toward her finances is a strong indication that she will not protect and safeguard sensitive information. Based on all of the financial information, I conclude that Applicant has not mitigated trustworthiness concerns based on financial considerations.

Alcohol Consumption

Excessive alcohol consumption is a trustworthiness concern because it often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. (AG ¶ 21)

Applicant was treated for excessive alcohol consumption in December 2015 and advised by her doctor not to consume alcohol. There are no reported alcohol-related incidents. Available evidence shows Applicant continues to consume moderate levels of alcohol. This information is sufficient to establish the following Alcohol Consumption Disqualifying Condition under AG ¶ 22:

- (d) diagnosis by a duly qualified medical or mental health professional (e.g. physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder;
- (e) the failure to follow treatment advice once diagnosed; and
- (f) alcohol consumption, which is not in accordance with treatment recommendations, after a diagnosis of alcohol use disorder.

Available evidence shows that Applicant was treated for an alcohol-related medical problem in December 2015. She was advised of the importance of discontinuing alcohol use. The file does not contain information concerning Applicant's treatment for any other alcohol-related problem. The file contains information that Applicant continued to consume some level of alcohol.

I considered the following Alcohol Consumption Mitigating Conditions under AG ¶ 23:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or

does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of action taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of an alcohol issue, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant presented evidence to establish that she does not have an alcohol-related issue. There is no evidence in Applicant's medical records that she was advised not to consume alcohol. There is evidence that she was advised of the importance of discontinuing alcohol use because of her medical condition. While she admits that she continues to consume some level of alcohol, she presented information from her doctor that she is capable of performing her current job, has sound judgment, and no issue with substance abuse. Accordingly, Applicant presented sufficient evidence to show a change of circumstances. She established that she is controlling her alcohol consumption impulses. If she had an alcohol-related issue, she has shown that she has been reformed or rehabilitated. I find that Applicant mitigated trustworthiness concerns for alcohol consumption.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's trustworthiness eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a trustworthiness clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's approximately 20 years of service to a defense contractor managing sensitive medical information. However, Applicant did not provide sufficient credible documentary information to establish that she took or plans to take reasonable and responsible action to resolve her financial obligations. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, she must sufficiently supplement the record with relevant and material facts regarding her finances, adequately articulate her actions and positions, and provide facts to mitigate the trustworthiness concerns. Applicant is required to show that she has a credible and reasonable plan to resolve her financial problems and that she has taken significant action to implement that plan. Applicant did not provide sufficient evidence of her plans.

In short, the file as a whole does not contain sufficient information to mitigate financial trustworthiness concerns. Applicant did not establish a reasonable plan to resolve her delinquent debts. She did not show that she took sufficient actions to implement the plan, and she did not establish that she is managing her financial obligations within her resources. However, Applicant established that she does not have an alcohol consumption trustworthiness concern. Overall, Applicant has not established that she can be trusted to manage sensitive information. The record evidence leaves me with questions and doubts pertaining to Applicant's judgment, reliability, trustworthiness, and her eligibility and suitability for a position of trust. For all these reasons, Applicant's eligibility for a public trust position is denied.

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 – 1.c:	Against Applicant
Subparagraphs 1.d – 1.f:	For Applicant

Paragraph 2, Guideline G:

FOR APPLICANT

Subparagraphs 2.a – 2.b:

For Applicant

Conclusion

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

THOMAS M. CREAN
Administrative Judge