



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



In the matter of:)
)
) ADP Case No. 18-00160
)
Applicant for Public Trust Position)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the alleged financial trustworthiness concerns. Based on a review of the pleadings and exhibits, national security eligibility for a position of trust is granted.

Statement of the Case

On January 25, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F, Financial Considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant submitted an Answer to the SOR on May 8, 2018, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on August 23, 2018. Applicant received it on September 19, 2018. The Government’s evidence is identified as Items 1 through 8. The

FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant submitted responses to the FORM on October 17 and 18, 2018 (Reply). Items 1 through 8 and Applicant's Reply are admitted into the record, without objection. The case was assigned to me on January 8, 2019.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e, with explanations. (Answer.) The allegations are supported by credit reports dated November 21, 2017, and June 7, 2018. (Item 6; Item 7.)

Applicant is 23 years old. She is single and resides with her mother to save money. She was enrolled in classes from June 2013 to May 2014 at a university, and then transferred to a college in October 2015. As of July 2016, she was still enrolled in classes at the college. She worked part time as a clerk in a discount retail store from November 2014 to present. Prior to that, she was an unemployed student. (Reply; Answer; Item 4; Item 7.)

Applicant is indebted on a lease agreement in the amount of \$5,771, as stated in SOR ¶ 1.a. This debt was for student housing while attending the university and became delinquent in 2014. Initially, she did not realize that this loan was separate from her student-loan accounts addressed below. However, when she realized it was a separate debt, she contacted this creditor and set up an arrangement to pay \$150 monthly until this debt is resolved. She provided the name of her point of contact and a phone number to verify her payments under the agreement. While she did not provide documentation of payments under this agreement, she appears to be resolving this debt. (Reply.)

Applicant is indebted on three student-loan accounts held by the same creditor in the total amount of \$10,547, as stated in SOR ¶¶ 1.b, 1.d, and 1.e. These loans became delinquent in 2016 and 2017. Applicant entered into a repayment agreement with this creditor to resolve these delinquencies through monthly payments of \$149. She did not establish a repayment agreement until after receiving the SOR, because she originally thought that her mother was repaying this debt. She documented that she has made six monthly payments according to this agreement. These debts are being resolved. (Reply; Item 7.)

Applicant was indebted on a charged-off account in the amount of \$369, as stated in SOR ¶ 1.c. This was a credit card account that became delinquent in 2016. Applicant settled this debt for less than the balance due, as documented in a May 2018 letter from this creditor. It is resolved. (Item 3.)

Applicant is addressing her delinquent debts as best she can with the funds that she has available. She lives "paycheck to paycheck" but is dedicated to resolving her debts in full. (Reply.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a position of trust.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable [trustworthiness] decision."

A person applying for a position of trust seeks to enter 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 national security eligibility. 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

Guideline F: Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

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

Applicant was delinquent on three student loans, a lease agreement, and a credit card in the total amount of \$11,022. Her oldest debt has been delinquent since 2014. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate trustworthiness concerns. I considered all of the mitigating conditions under AG ¶ 20, including the following:

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

Applicant has resolved her credit card debt, and documented that she is making payments on her three student loans. She has made six payments under that agreement. While she failed to document payments on the lease, she provided contact information to verify her payments and credibly averred that she is paying that debt. There is evidence of mitigation under AG ¶ 20(d), with respect to these debts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 pertinent facts and circumstances surrounding this case. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.¹

¹ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant was young when she incurred the alleged delinquencies and relied on her mother to manage her finances. She has since matured and began addressing her delinquent accounts. She provided sufficient evidence to demonstrate a plan to resolve her outstanding delinquent debts within the standard defined in the above case. The likelihood that financial problems will recur, or Applicant will stop making payments on the plans she has initiated, is minimal based on her efforts to date and her knowledge that similar problems could jeopardize her employment. The potential for pressure, coercion, or duress is eliminated by Applicant's efforts to resolve her debt. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a position of trust. She met her burden to mitigate the trustworthiness concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. National security eligibility for access to sensitive information is granted.

Jennifer Goldstein
Administrative Judge