



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



In the matter of:)
)
) ADP Case No. 18-00589
)
Applicant for Public Trust Position)

Appearances

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

09/14/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the financial considerations trustworthiness concerns. Applicant's eligibility for access to sensitive information in a public trust position is denied.

Statement of the Case

On March 23, 2018, the Department of Defense (DOD) issued 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's) effective within the DOD for SORs issued after June 8, 2017.

Applicant timely answered the SOR on April 27, 2018, and elected to have a hearing before an administrative judge. The case was assigned to me on July 20, 2018.

The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing (NOH) scheduling the hearing on August 8, 2018. Government Exhibits (GE) 1 – 3 and Applicant's Exhibits (AE) A – J were admitted without objection. I left the record open for

one week until August 15, 2018, for Applicant to submit a letter from her mother and county court documents from her divorce. (Tr. 74) She submitted these timely and her post-hearing documents were admitted as AE L. DOHA received the transcript of the hearing (Tr.) on August 21, 2018.

Applicant is 33 years old. She graduated from high school in 2003. She obtained her licensed practical nurse (LPN) certificate in 2014. Applicant married in 2004 and divorced in 2005. She married again in late 2005 and divorced in 2014. She has a 12-year-old daughter from that marriage. (Tr. 13) Applicant served in the Army National Guard from 2002 to 2005, and she received an honorable discharge after being medically separated. (Tr. 56-57) She has been employed by a federal agency working as a customer service representative since November 2016. (Tr. 14) Applicant and her daughter live with Applicant's mother, who has a serious illness, and her step-father who is also disabled and unemployed. Applicant provides financial support to her mother and step-father. (Tr. 15, AE L)

Applicant testified that she struggled financially due to a protracted divorce process, starting with her separation in 2011. The divorce lasted three years and was contentious and expensive. (Tr. 15-16) She was a single mother raising her daughter and her ex-husband's son from a prior relationship, as well as supporting her parents. Applicant testified and produced family court documents showing that her ex-husband was supposed to pay half of their daughter's medical expenses and \$500 in child support each month according to the divorce decree. (Tr.17, AE L) However, since May 2015, he was only actually paying child support in the amount of \$245 each month pursuant to a court ordered wage assignment or garnishment. (AE L)

The SOR alleges 24 delinquent debts including student loans, consumer credit debt, and medical debts totaling \$91,278. Approximately \$65,000 of that total debt, is owed to the Department of Education (DOE) for delinquent student loans as alleged at SOR ¶¶ 1.d through 1.i. Applicant produced a document reflecting a balance of \$81,741 owed to DOE on February 27, 2018, as the interest continues to accrue. (AE A) Applicant obtained the student loans to attend four different colleges in pursuit of her nursing degree. (Tr. 24) Applicant provided a character reference from one of her professors attesting to the fact that Applicant was a straight-A student and graduated with honors. (AE K) She produced loan-rehabilitation documents at the hearing showing that she has now consolidated the afore-mentioned student loans for repayment, and entered into a plan to make payments of \$61 each month starting in May 2018. (Tr. 22, AE A)

Applicant testified that she has paid in full the \$6,334 in court costs and fines associated with her failure to maintain automobile insurance as alleged in SOR ¶ 1.a.

² Unless otherwise indicated, these facts were taken from Applicant's Electronic Questionnaires for Investigations Processing (e-QIP) also known as a security clearance application (SCA) dated May 5, 2017, and signed on the date of the hearing.

(Tr. 26, AE B) However, she testified that she borrowed this money from her mother to pay the county court, and she still owes her mother \$3,000. (Tr. 26-27) She has not yet reached out to the creditor in SOR ¶ 1.b to establish a repayment plan. In her Answer to the SOR in April 2018, Applicant admitted to this charged-off debt, which resulted when she had inadequate insurance to cover an automobile wreck. Applicant denied the charged-off debt alleged in SOR ¶ 1.c, claiming that it was her ex-husband's debt. She produced no documents to substantiate this assertion.

Applicant disputed the delinquent medical debt alleged in SOR ¶ 1.j because she actually had health insurance coverage but the provider used her wrong date of birth in submitting the bill. She produced evidence of health insurance and this debt is now paid in full. (AE C) SOR ¶ 1.k is disputed because Applicant was only supposed to rent the subsidized apartment in question if she was enrolled full-time at the university. Although, Applicant produced documentation showing that she was working full time, while attending college, she has not demonstrated that she was enrolled full-time, or that she effectively disputed this debt with the creditor. (AE D)

Applicant admitted the delinquent debt alleged in SOR ¶ 1.l and expressed her intent to mitigate it in her Answer. She stated that this was a joint debt with her ex-husband and his son. He refuses to pay this and many other joint debts acquired during their marriage. She offered no evidence of any payment plan, and this debt remains unresolved. Applicant produced documentation at the hearing showing that the medical debts alleged at SOR ¶¶ 1.q and 1.u, owed to the same creditor, were paid in full on July 5, 2018. (AE H) The delinquency owed to a debt collection agency alleged at SOR ¶ 1.p has been paid in full in January 2018, after Applicant's pay was garnished in the amount of \$100 each pay period. (Tr. 48, AE G) Applicant also produced documents at the hearing showing that the small consumer debts alleged in SOR ¶¶ 1.s and 1.t have been paid. (AE J) The debt placed for collection by a bank, alleged at SOR ¶ 1.o now has a zero balance (AE F) and the medical debt placed for collection as alleged at SOR ¶ 1.r has been paid in full. (Tr. 41, AE E)

Applicant testified that the \$5,976 student-loan debt owed directly to the University was supposed to be covered by her ex-husband's GI bill education benefits. (Tr. 66) However, she provided no documentation to show that it was effectively disputed or resolved. In Applicant's Answer, she stated that she dropped out of this particular university due to her divorce. The remaining alleged consumer and medical delinquent debts alleged at SOR ¶¶ 1.m, 1.n, 1.v, 1.w and 1.x have not been resolved. Applicant claims in her Answer that these were all debts incurred for their daughter's expenses. Her ex-husband has not paid half as required by their divorce decree.

Applicant's mother provided a character reference confirming that Applicant went through a bitter and expensive divorce and her ex-husband was ordered to pay half of their daughter's medical costs and child support. He failed to do so. (AE L) Applicant has stepped up to help out her mother and step-father financially, and she graduated nursing school with a 4.0 grade point average, and honors.

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Code of Federal Regulations Title 32 – National Defense, part 154.13 and part 154, Appendix J – ADP Position Categories and Criteria for Designating 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.” 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 DOD Directive 5220.6 before any final unfavorable access determination may be made.

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 overarching adjudicative goal is a fair, impartial and commonsense 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 national security.”

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 to obtain 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of 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 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding information.

Applicant's admissions and the government's exhibits support the following AG ¶ 19 disqualifying conditions:

- (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.

Applicant admitted to owing the delinquent student loan debts alleged in the SOR totaling approximately \$81,000. These make up the majority of her total delinquent debt. They are her individual debts. She provided post-hearing documents to show a payment plan with DOE on her consolidated student loans. However, this plan was entered into a few months before the hearing and no evidence of a stream of \$61 payments pursuant to the plan has been offered. These longstanding debts are evidenced by her most recent credit bureau report. She has endured a long, expensive divorce and she is a single mother. In her Answer to the SOR, Applicant claimed that she disputed many of the debts, but submitted no dispute letters to show that she corresponded with, or negotiated with her creditors. There is sufficient evidence to support the application of the above disqualifying conditions.

Conditions that could mitigate trustworthiness concerns arising from financial difficulties are provided under AG ¶ 20. The following are potentially applicable:

(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 problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(e) the individual has a reasonable basis to dispute the legitimacy of past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In her Answer to the SOR, Applicant stated that she intended to mitigate or pay her debts. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct 23, 2013). She has made great strides in paying off some of the minor consumer debts, and she recently entered into an eleventh-hour payment plan with DOE. However, these efforts are too little, too late. Insufficient time has passed to confidently conclude that she will continue to make payments. Otherwise, she produced inadequate documentation to show payments or progress on any of her delinquent debts alleged in the SOR. The delinquencies alleged in the SOR are longstanding and ongoing. Her divorce was a condition beyond Applicant's control. She has not demonstrated that she acted responsibly under the circumstances. She provided no evidence of financial counseling or a budget to show that her financial problems have been resolved and are under control. Applicant made only minimal good-faith efforts to repay creditors. The mitigating conditions enumerated above at ¶ 20(b) and ¶ 20(d) have only partial application. Otherwise, none of the mitigating conditions enumerated above apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's conduct and all the 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Applicant is a single mother of a twelve-year old child, and she supports her infirm parents. She deserves great credit for working full time while educating herself. She has endured an expensive divorce and struggled through a downturn in the economy.

Applicant's finances remain a trustworthiness concern. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the financial considerations trustworthiness concerns.

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.i:	Against Applicant
Subparagraphs 1.k – 1.n:	Against Applicant
Subparagraphs 1.v – 1.x:	Against Applicant
Subparagraphs 1.j, 1.o, and 1.p:	For Applicant
Subparagraphs 1.q – 1.u:	For 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.

Robert J. Kilmartin
Administrative Judge