



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



In the matter of:)	
)	
)	ADP Case No. 18-01231
)	
Applicant for Public Trust Position)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2019

Decision

LYNCH, Noreen A., Administrative Judge

This case involves trustworthiness concerns raised under Guideline F (Financial Considerations). Eligibility for access to sensitive information is denied.¹

Statement of the Case

Applicant submitted a questionnaire for investigations processing (e-QIP) on May 18, 2017. On May 4, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F.²

¹ Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a “public trust” determination, to occupy an automated data processing (ADP) position.

² The DOD CAF acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on August 6, 2018.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the trustworthiness concerns. Applicant received the FORM on August 15, 2018, and she submitted a response to the FORM (AE A), dated September 4, 2018, including attached documents. The Government's exhibits included in the FORM (Items 1 to 10) and AE A are admitted into evidence. The case was assigned to me on February 14, 2019.

Findings of Fact

Applicant is a 41-year-old medical clerk employed by a defense contractor. She has been consistently employed since 2013 with her sponsoring employer (Item 3). Applicant was married in 2007 and divorced in 2016. She has three children.

The SOR alleges multiple (21) delinquent debts, including consumer collection and charged-off accounts; vehicle repossession and medical accounts totaling about \$30,000. Applicant denied all SOR allegations and stated that the debts were being disputed or removed through a credit repair service. (Item 2) She explained that several of the debts are the result of her divorce and that her ex-husband is responsible for those delinquent accounts. Applicant noted that she had made some poor choices with her money and credit. (Item 5) She also noted that she and her then husband over extended themselves with credit cards in 2011, and in 2015, he asked for a divorce and left town. She stated that it was her intention to consolidate the debt and pay \$99 a month to the service to settle the debts or have them removed. (Item 5) There is nothing in the record to support that claim. She stated in her interrogatories that she had not paid any of the debts, but they were going to be in a payment plan. (Item 6) She did not submit any supporting information. She presented letters of dispute to challenge accounts with her answer. (Item 5)

In Applicant's response to the FORM, she noted that she has worked in the healthcare industry since 1996, and recently was chosen as "employee of the year." She submitted individual letters that she wrote in 2018 to each creditor regarding validation of the various debts. (AE A) No additional documentary evidence of debt resolution or current financial status was submitted.

Law and 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 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 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. 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

The concern under this guideline is set out in AG ¶ 18:

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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.

The documentary evidence supporting the SOR allegations and Applicant's admissions are sufficient to establish the disqualifying conditions.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

(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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(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 the 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.

Although Applicant's divorce in 2016 is the cited reason for the delinquent debts and the overspending during the marriage, Applicant has disputed the debts through a repair service. She also stated that she would consolidate the debts and arrange to have them settled or removed. Applicant states that her husband was to have paid many of the debts, but he did not.

Applicant did not submit any documentation that she has made any efforts to pay her delinquent debts, except to write letters of dispute in 2018. She has not provided evidence that the credit repair service is paying any of the debts. She has not shown sufficient justification for responsible action. Despite her consistent employment, her financial responsibility is questionable. Likewise, she has not provided any evidence of efforts to resolve her debts, or that her financial situation is under control. No mitigating conditions fully apply.

Whole-Person Concept

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 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.

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis.

Applicant has not shown evidence of resolution of the SOR debts despite her attestations to the contrary. I considered the factors that may have led to Applicant's financial difficulties. However, the limited information in the record has not convinced me that Applicant has made sufficient efforts to resolve her debts, or that she is financially responsible.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated 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.u:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Noreen A. Lynch
Administrative Judge