



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



In the matter of:)
)
) ADP Case No. 18-01317
)
Applicant for Public Trust Position)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the concerns raised by her continued marijuana use and delinquent debt. She did not intentionally falsify her Public Trust Position Applications. Based on a review of the pleadings and exhibits, national security eligibility for a position of trust is denied.

Statement of the Case

On May 30, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guidelines H, F, and E. (Item 1.) The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after June 8, 2017.

Applicant answered the SOR on June 20, 2018, and requested a decision on the record without a hearing. (Item 1.) Department Counsel submitted the Government's written case on July 18, 2018. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 10. She was

given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on July 25, 2018, and did not respond. Items 1 through 10 are admitted into evidence. The case was assigned to me on December 10, 2018.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.h, 2.a through 2.o, 2.q through 2.t, and 3.a, with explanations. She denied SOR ¶¶ 2.p, and 3.b through 3.e. (Item 1.)

Applicant is 42 years old. She earned an associate's degree in 1997. She listed on her April 2016 electronic Questionnaires for Investigations Processing (e-QIP) that she has been employed in her present position since May 2001. She occupies a position of trust. She was married to her first husband from June 1996 to February 2009. She married her second husband in 2010, and has three children and one stepchild. (Item 2; Item 3; Item 4.)

On Applicant's April 2016 e-QIP, she indicated: "I experimented with several different drugs in high school, but the only one that I continued to do beyond high school was marijuana and there were stretches of years (including my first marriage) when I did not do it out of respect for those around me who do not smoke." (Item 4.) She estimated the dates of use to be June 1991 through April 2016. She further checked the box that indicated she intended to engage in this activity in the future and indicated that "while there are no specific plans of continuing [to use marijuana], there are also no specific plans of avoiding it, either." (Item 4.)

During her subject interview conducted on May 23, 2017, Applicant discussed her drug use in detail. (Item 5.) She indicated that she used and purchased marijuana at varying frequencies since 1991. At the time of the interview, she used marijuana on a weekly basis. She used marijuana with her husband and friends. She disclosed that between 1991 and 1994 she used cocaine once, LSD three times, and amphetamines at varying frequencies. (Item 5.)

Applicant completed Public Trust Position Applications in July 2003 and March 2005. Questions 21(a) and 21(b) on those forms asked Applicant if she had used any controlled substance within the last year and whether in the past seven years she had been involved in the illegal purchase of any narcotic, depressant, stimulant, hallucinogen, or cannabis. She answered all of these questions no. She claimed in her answer to the SOR that between March 1994 and May 2008, she did not use or purchase any controlled substance to include marijuana. Her claim is credible, as she consistently indicated that she did not use marijuana during the course of her first marriage, which corresponds with the dates of her Public Trust Position Applications. (Items 2-5.)

Applicant was also alleged to be indebted on 19 delinquent accounts totaling \$34,656, and to have discharged debt through Chapter 7 bankruptcy in June 2004. These debts and the bankruptcy filing were established in the bankruptcy petition and the credit reports dated May 6, 2005, June 9, 2016, and July 16, 2018. (Items 7-10.) She attributed her debts to her divorce, the need for emergency medical care, and underemployment. (Item 5.)

In Applicant's Chapter 7 bankruptcy petition, filed in March 2004, she listed assets totaling \$16,053 and liabilities of \$64,500. All of her liabilities were unsecured claims. They were discharged in June 2004. (Item 10.)

Of her alleged delinquent debts, a total of \$10,102 related to unresolved medical accounts, as stated in SOR ¶¶ 1.a through 1.d, 1.g through 1.o, 1.q, and 1.s. In her answer, she indicated, "I admit that I have many medical bills and am actively making payments every month to pay them off. I do not know which of these debts is legitimate and/or still outstanding." She provided nothing further in this regard. Her July 2018 credit report listed four delinquent medical accounts, which correspond with SOR ¶¶ 1.k, 1.l, 1.m, and 1.n. It is unclear if the other medical debts alleged were resolved through payment or if they are no longer reported on the credit report due to their age. SOR ¶¶ 1.a through 1.d, 1.g through 1.o, 1.q, and 1.s are unresolved. (Items 8, 9.)

Applicant also had four non-medical debts identified on the SOR. She was alleged to be delinquent in the amount of \$3,707 for a judgment against her by a bank, as stated in SOR ¶ 1.e. She satisfied this judgment in January 2013, as reflected on her July 2016 credit report. She was also alleged to be indebted on a judgment obtained by a utility company in the amount of \$658 as stated in SOR ¶ 1.f. She satisfied this judgment in February 2011, as reflected on her July 2016 credit report. These debts are resolved. (Item 8.)

SOR ¶ 1.p alleged Applicant was indebted on a repossessed automobile in the amount of \$16,873. This debt became delinquent in January 2010. Applicant denied this debt. She indicated that this debt was incurred by her ex-husband without her knowledge or permission. "As soon as [she] discovered the purchase had been made, [she] left him. In [their] divorce papers, this is the date of [their] separation." Applicant presented no evidence establishing that she contested this debt with the creditor or credit reporting agency. This debt is unresolved. (Item 8.)

SOR ¶ 1.r alleged Applicant was indebted to a bank in the amount of \$3,316. The debt was reported as delinquent in October 2014. She admitted this debt and claimed to have set up a payment agreement with this creditor. She provided no documentation of that agreement or of any payments made to this creditor. This debt is unresolved. (Items 5, 8.)

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. Likewise, I have avoided drawing inferences grounded 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 H: Drug Involvement and Substance Misuse

The trustworthiness concern relating to the guideline drug involvement and substance misuse is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains seven conditions that could raise a trustworthiness concern and may be disqualifying. The following conditions are established:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Appellant smoked marijuana at varying frequencies from 1991 to present. She purchased it for her own use and shared it with friends and her current husband. She also used LSD, cocaine, and amphetamines at varying frequencies between 1991 and 1994. She continued to use marijuana despite occupying a position of trust since 2001, and indicated an intent to continue its use. Therefore, AG ¶¶ 25(a), 25(c), 25(f), and 25(g) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate trustworthiness concerns. Two conditions may be applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant indicated her intent to use marijuana in the future. She uses it with her husband and current associates. She has not presented sufficient evidence to support any of the mitigating conditions.

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.

AG ¶ 19 describes two conditions that could raise trustworthiness concerns and may be disqualifying in this case:

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

Beginning around 2004, Applicant accumulated delinquent debt that she has been unable to fully resolve. She discharged liabilities of \$64,500 through Chapter 7 bankruptcy in June 2004. However, she continued to accrue additional delinquent debt. The majority of her 19 delinquent accounts remain unresolved. The evidence raises the above trustworthiness concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate trustworthiness concerns arising from financial problems:

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

Applicant failed to meet her burden to establish that she is addressing the remaining 17 delinquent accounts. While there is evidence that ¶ 1.e and 1.f were resolved in good faith, there is no evidence that her other debts were repaid or otherwise resolved in good faith. She provided no evidence to suggest that future delinquencies are unlikely. Her debts are partially attributable to circumstances beyond her control like emergency medical care and her divorce, but she has not demonstrated reasonable and responsible action to address them, despite being fully employed since 2001. Applicant failed to mitigate the financial concerns.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Based on Applicant's alleged deliberate falsification of her e-QIP and drug use, the following disqualifying condition could apply:

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant was truthful on her 2003 and 2005 Public Trust Position Applications. She has consistently stated that she did not use marijuana during the course of her first marriage, out of respect for her husband who did not use it. The dates of her first marriage correspond with the reporting timeframes of one and seven years for drug use and purchase. She honestly answered the questions about her past drug use by stating "no" on those forms. Therefore, AG ¶ 16(a) is not established.

Applicant continues to purchase and use marijuana. As a result, she is vulnerable to exploitation, manipulation, and duress. The evidence is sufficient to raise AG ¶ 16(e).

AG ¶ 17 provides conditions that could mitigate trustworthiness concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant remains vulnerable to coercion. She produced no evidence of counseling or positive steps that would alleviate the risks present from her conduct. Her decision to continue to use marijuana demonstrated questionable judgment. None of the above mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's 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 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. Applicant is 42 years old, and has a long history of marijuana use and financial difficulties. She intends to continue using marijuana, which casts doubt on her judgment and ability to follow rules and regulations. Additionally, Applicant has not established a track record of resolving delinquent debts and achieving financial solvency. Overall, the record evidence leaves me with doubt as to Applicant's judgment, reliability, eligibility, and suitability for a position of trust. She failed to meet her burden to mitigate the trustworthiness concerns raised under the guidelines for drug involvement and substance misuse, financial considerations, and personal conduct.

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 H:	AGAINST APPLICANT
Subparagraph 1.a through 1.h	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d	Against Applicant
Subparagraphs 2.e and 2.f	For Applicant
Subparagraphs 2.g through 2.s	Against Applicant
Subparagraph 2.t	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a	Against Applicant
Subparagraphs 3.b through 3.e	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. Access to trusted information is denied.

Jennifer Goldstein
Administrative Judge