



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



In the matter of:)
)
) ADP Case No. 18-01690
)
Applicant for Public Trust Position)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the financial considerations and personal conduct trustworthiness concerns. Applicant’s eligibility for access to sensitive information in a public trust position is granted.

Statement of the Case

On August 29, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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, and elected to have a hearing before an administrative judge. The case was assigned to me on October 18, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for November 21, 2018, scheduling the hearing on December 6, 2018. I conducted the hearing as scheduled. Government Exhibits (GE) 1 – 4, and Applicant’s Exhibits (AE) A and B were

admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 2, 2019.

In her Answer to the SOR on September 24, 2018, Applicant admitted the 11 delinquent debts alleged in the SOR, but she denied SOR ¶ 1.f, stating that the charged-off debt in the amount of \$376 was paid in full. She stated that she filed a petition for Chapter 13 bankruptcy protection on July 17, 2018. She attached the bankruptcy petition and ancillary schedules and documents, which indicated that a payment plan was entered with the trustee requiring Applicant to make 58 payments of \$470 per month, starting on August 16, 2018. She attached a receipt corroborating this payment. All of the delinquencies alleged in the SOR (except SOR ¶ 1.f) are addressed in her Chapter 13 repayment plan. (GE 3)

Applicant is 44 years old. She graduated from high school in 1992. She never married, and is a single mother of a daughter, age 18, and a son, age 5. She is also financially responsible for raising a 17-year old nephew.³ She has been employed as a claims analyst by a federal contractor for 19 years. She maintained a position of public trust clearance for almost two decades, without issue. She is employed in a position of public trust because she routinely accesses personal information. After a thorough and careful review of the pleadings and exhibits, and her testimony, I make the following additional findings of fact.

Applicant provided a character reference letter attesting to her honesty, reliability and dependability. (AE A) She also provided several earnings statements from her employer showing her net pay of approximately \$437 every two weeks, and automatic payroll deduction of \$470 each month paid to the bankruptcy trustee pursuant to her Chapter 13 plan. (AE B) The documents reflect a steady stream of payments to the trustee from August to December 2018. She had financial counseling as a prerequisite to filing the bankruptcy petition.⁴ This was her first time filing for bankruptcy protection.

Five of the delinquent debts alleged in the SOR (SOR ¶¶ 1.c, 1.d, 1.j, 1.k, and 1.i) were for credit cards that Applicant used to pay living expenses while she struggled to raise three children as a single mother with a meager salary.⁵ She received no child support or financial assistance from the biological fathers of these children, but she did receive monthly social security checks for \$281 and \$781 for her two biological children.⁶ SOR ¶¶ 1.a and 1.b are delinquent debts related to automobiles that were repossessed when Applicant could not keep up with payments on the automobile loans. SOR ¶¶ 1.g and 1.l are for delinquent medical bills amounting to \$343 and \$45. These

³ Tr. at 28, 29.

⁴ Tr. at 44.

⁵ Tr. at 36, 56.

⁶ Tr. at 47.

were incurred at a time when she lacked adequate medical insurance. All of the alleged delinquent debts are reflected in her credit report. (GE 2)

Applicant testified that when she completed security clearance applications (SCAs) previously in her 19 year career in a position of public trust, she was always provided with a credit report by her employer. However, when she completed the SCA (GE 1) on January 22, 2018, she felt rushed by her supervisor, as she went back and forth to make corrections, four times.⁷ She did not have access to a credit report and she did not know all of the details of her delinquent debts when she answered the questions in section 26 (Financial Record) negatively. She did not have a specific intent to deliberately deceive the government because she reasonably believed she could discuss the debts at the follow-up clearance interview, which was specifically intended for amplification or elaboration, in her experience.⁸

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.”

⁷ Tr. at 44 - 46.

⁸ Tr. at 18, 44.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a [trustworthiness] concern insofar as it may result from criminal activity, including espionage.

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 classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing 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 the 12 delinquent debts alleged in the SOR totaling over \$26,288. These consumer debts are evidenced by her 2018 credit bureau report. 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;
- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is a single mother of three children who struggled to make ends meet on a modest income. She receives no child support from the biological fathers. These are circumstances beyond her control. Her biological daughter is now 18 years old, and her nephew is 17. Her financial responsibility for them should decrease as they enter adulthood. She has worked continuously for 19 years in a sensitive position, and she has recently entered into a Chapter 13 bankruptcy repayment plan that includes all of her SOR creditors. She had financial counseling as a precondition of filing the Chapter 13 petition in July 2018. She has steadfastly made a stream of payments of \$470 each month, in compliance with the bankruptcy plan. She has demonstrated her good-faith intentions to address the delinquent debts alleged in the SOR. She paid the debt alleged at SOR ¶ 1.f in full. All of the mitigating conditions enumerated above apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

Applicant omitted her delinquent debts in section 26 of her 2018 SCA. I find that Applicant did not have the intent to deliberately falsify her 2018 SCA as alleged. She testified credibly that she did not have access to a credit report and she felt pressured to rush the completion of her SCA. AG ¶¶ 16(a) does not 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 Guidelines E and 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 three children and she struggled to keep up with living expenses and uncovered medical expenses. She has also endured a downturn in the economy.

Applicant's finances no longer remain a trustworthiness concern. She has met her burden of persuasion. She did not specifically intend to deceive the government when she completed her SCA. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant mitigated the financial considerations and personal conduct 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:	FOR APPLICANT
Subparagraphs 1.a – 1.l:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Robert J. Kilmartin
Administrative Judge