



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



In the matter of:)
)
) ADP Case No. 18-01879
)
Applicant for Public Trust Position)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant has not mitigated the trustworthiness concerns under Guideline F (Financial Considerations). Eligibility for access to public trust position is denied.

Statement of the Case

On May 5, 2014, Applicant submitted a security clearance application (SCA). On July 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing trustworthiness concerns under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On October 10, 2018, Applicant responded to the SOR, and she requested a hearing before an administrative judge. On February 28, 2019, the case was assigned

to me. On March 4, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for March 19, 2019.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence, which I admitted without objection. Applicant testified, and offered eight documents, Applicant Exhibits (AE) A through H into evidence, which I admitted without objection. At the request of Applicant, I held the record open for one month to submit additional documentation. DOHA received the hearing transcript (Tr.) on April 1, 2019. On April 17, 2019, Applicant provided copies of six letters she mailed to her creditors. On May 20, 2019, Applicant provided an e-mail summary of the status of six SOR accounts, and her plans to start making payments to four of the creditors beginning June 1, 2019. She did not provide any substantiating documents with her e-mail. The record was closed on May 23, 2019.

Procedural Matters

Department Counsel requested SOR ¶ 1.b be withdrawn since the alleged delinquent account was not Applicant's account. She had only been listed as an authorized user on the account. I granted the request, and SOR ¶ 1.b was withdrawn for good cause.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 38 years old. She is currently married and has four children, ages 4, 6, 7 and 17. The youngest two children receive Social Security disability of approximately \$1,500 per month. Her spouse is attending college full-time using the benefits of his GI Bill, which pays for his tuition in full. He also receives a monthly stipend of about \$750 from the GI Bill. He is not currently employed. Applicant is also enrolled in an on-line college class, which is partly paid by grants, and partly paid through student loans. She was unemployed from April 2013 to August 2015. She was employed for a brief time from August 2015 to September 2015, and then the family moved to another state. She remained unemployed until December 2016, when she started employment with her current employer. She is a customer service employee for their call center. This is her first application for a public trust position. (Tr. 26-32, 36-38; AE 2)

Applicant stated that she got into financial trouble due to her husband being unemployed, her periods of unemployment, and after she was involved in a car accident in May 2014. She often missed work due to constant headaches and pain. She exhausted all of her sick leave and vacation time. She was not covered by car insurance at the time of the accident, and she claimed the other driver was at fault. The other driver is suing her for damages, and Applicant's lawyer is suing the other driver for her injuries and damages. This civil case is currently pending litigation. (Tr. 32-34)

SOR ¶ 1.a alleges a delinquent car loan account in the amount of about \$11,789. Applicant admitted this account in her response to the SOR. She said it was a joint account for her husband's car, which they were unable to pay after he lost his job. This account became delinquent in 2017. The car is still in their possession, and this account remains delinquent. Applicant has not made payments on the account, or contacted the creditor, but she hired Lexington Law, a for-profit consumer financial repair company, in about November 2018 to contact this creditor and request a settlement offer. This debt has not been resolved. (Tr. 35-36, 47-48; GE 2)

SOR ¶ 1.b was withdrawn. (Tr. 39)

SOR ¶ 1.c alleges a financial credit union account charged off in the amount of \$1,500. Applicant admitted this account in her response to the SOR. She said this debt was the result of a job lost in 2013. At the hearing, she stated Lexington Law had this account removed from her credit report. She acknowledged that this was her debt, and she had not contacted the creditor or made any payments since she expected Lexington Law would communicate with the creditor about settling the debt. She was asked if she thought Lexington Law would contact the creditor after the account had been removed from her credit report. Applicant did not believe Lexington Law would take further action. Applicant planned to send out letters to her creditors in about four months. This debt is unresolved. (Tr. 39-40)

SOR ¶ 1.d alleges an apartment lease account referred for collection in the amount of \$1,343. Applicant admitted this account in her response to the SOR. She said it was a result of her husband losing his job in 2011. This account became delinquent in 2012. At the hearing, Applicant claimed that she had not renewed her lease, and the apartment complex never provided her documentation with details why a balance was owed. She was not completely certain if this account had been removed from her credit report by Lexington Law. She acknowledged that she was preparing letters for multiple creditors to see if the debt could be settled or paid. She expected to prepare these letters, or make phone calls to creditors, within the next four months. This debt is unresolved. (Tr. 40-42, 45, 53-54; GE 3)

SOR ¶ 1.e alleges a delinquent cable bill in the amount of \$1,151. Applicant denied this account in her response to the SOR, but at the hearing she admitted responsibility for this account. This account is no longer on her credit report, but she will prepare a letter to the creditor to see if the debt could be settled or paid. This debt is unresolved. (Tr. 42-43)

SOR ¶ 1.f alleges a delinquent cell phone account in the amount of \$772. Applicant admitted this account in her response to the SOR, and listed that the debt is due to her losing her job at this cell phone company in 2013. At the hearing, Applicant admitted this debt remained delinquent. She planned to prepare a letter to this creditor to determine her payment options within the next four months. This debt is unresolved. (Tr. 43)

SOR ¶¶ 1.g, 1.l, 1.m, 1.n, and 1.o allege unpaid medical accounts referred for collection in the total amount of \$1,213. Applicant denied all of these medical accounts in her response to the SOR. At the hearing, she said she always carried medical insurance. With so many bills, she explained that she was not certain what medical services, or medical providers, did not obtain payment from her insurance. Some, if not all, of the medical accounts had been removed from her credit report with the help of Lexington Law. Applicant claimed that she had not received any bills or statements for any of these medical accounts. She planned to do research, and contact collection companies in an effort to determine the original creditor. Then, within the next four months, she would start sending out letters, or make phone calls, to these creditors to determine payment options. These debts are unresolved. (Tr. 43-45)

SOR ¶ 1.i alleges a delinquent account referred for collection in the amount of \$8,534. Applicant denied this account in her response to the SOR, and listed that the debt was disputed and removed. This account became delinquent in 2013. At the hearing, she stated this debt is similar to the other apartment leasing complex debt. Applicant disputed this debt because she claimed they were no longer under a lease at the time they moved. This debt has been removed from her credit report. She had a letter at home showing that she was no longer responsible for this debt. Department Counsel requested documentation from Applicant to verify that this account was settled. Applicant stated she could provide the letter. Applicant failed to provide substantiating documentation while the record was held open. This debt is unresolved. (Tr. 46-47, 53-54)

SOR ¶ 1.j alleges a delinquent internet and TV utility account referred for collection in the amount of \$857. Applicant admitted this account in her response to the SOR, and listed that the debt is due to her losing her job in 2013. At the hearing she stated this is a creditor she planned to contact within the next four months to determine her payment options. This debt is unresolved. (Tr. 47)

SOR ¶ 1.k alleges a delinquent account referred by an insurance company in the amount of \$455. Applicant denied this account in her response to the SOR. This account became delinquent in 2012. She listed this account was paid once she started insurance coverage with the company recently. Applicant failed to provide substantiating documentation. This debt is unresolved. (GE 3)

Applicant nets approximately \$4,410 per month, to include her income, the Social Security disability payment, her spouse's GI Bill monthly stipend, and his Veterans Administration disability payment. She said the majority of their income goes to their utility bills. They are monitoring their utilities and they have also watched their entertainment expenses, by eating in more and not going to the movies as often. They have not been able to start a savings account. Lexington Law does offer financial counseling and advice on how to manage a budget. (Tr. 48-51, 54)

Applicant's supervisor submitted a character reference letter. He found Applicant to be a valuable part of the organization since she was hired in December 2016. She

takes her job seriously and does everything in her power to uphold the security standards. (AE A)

Policies

A memorandum from the Under Secretary of Defense dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the Directive before any final unfavorable determination may be made. The standard set out in the adjudicative guidelines for assignment to sensitive duties is that 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.

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.

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 an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security." The Government must present substantial evidence to establish controverted facts alleged in the SOR.¹ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.² An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.³ An applicant has the ultimate burden of demonstrating that it is clearly consistent with national security to grant or continue eligibility for access to sensitive information.

¹ Directive ¶ E3.1.14.

² Directive ¶ E3.1.15.

³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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. . . .

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. Applicant's 14 delinquent debts total approximately \$29,000. These debts became delinquent between 2012 and 2017, and they remain delinquent. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶ 19(a) (an inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). Further inquiry about the applicability of mitigating conditions is required.

Conditions that could mitigate the financial considerations trustworthiness concerns 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 bears the burdens of production and persuasion in mitigation. Her debts became delinquent between 2012 and 2017, and they remain delinquent. She has referenced financial hardships due to periods of unemployment for her and her spouse, and medical complications she received from a car accident in 2014; however, she has not provided sufficient information or documentation to establish the financial impact of these conditions beyond her control. More important, she must demonstrate that she acted responsibly under the circumstances. Applicant has not provided any documentary evidence of a debt-resolution plan she has established with her creditors, evidence of systematic payments in accordance with the plan, or even a receipt or letter showing she is no longer responsible for a specific account. She joined a consumer credit repair company in November 2018, after receipt of the SOR. This company will dispute all of a consumer's reported debts, and perhaps have some of those delinquent accounts removed from the credit report, but this does not show any good-faith effort that an individual responsible for the account is working dutifully to resolve their delinquent debt. She recently sent an e-mail indicating that she will start making payments to four of her delinquent creditors next month. None of the financial considerations mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a trustworthiness determination 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. Applicant's financial problems have persisted for several years, and there is no evidence that these problems are being addressed, being resolved, and are unlikely to recur. Even if Applicant experienced circumstances beyond her control that negatively impacted her finances, she must demonstrate that

