



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



In the matter of:)
)
) ADP Case No. 18-02283
)
Applicant for Public Trust Position)

Appearances

For Government: Moira Modzelewski, Esquire, Department Counsel
For Applicant: *Pro se*

05/30/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves public trust concerns raised under Guideline F (Financial Considerations). Eligibility for a position of public trust is granted.

On October 4, 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.¹ Applicant timely answered the SOR, requesting a hearing before an administrative judge. The case was assigned to me on February 14, 2019. A notice of hearing was issued on February 28, 2019, scheduling the hearing for April 11, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1-4, which were admitted. Applicant testified on her own behalf and submitted Applicant Exhibits (AE) A-F, which were accepted into the record without objection. The record

¹DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and Security Executive Agent Directive 4, effective on 8 June 2017.

was left open until May 22, 2019, and Applicant timely submitted one additional document, which was marked AE G, and was accepted without objection. The transcript was received April 19, 2019.

Findings of Fact

Applicant admitted the SOR financial allegations in SOR 1.a-1.m. She is a 32-year-old executive assistant for a defense contractor, for whom she has worked since October 2017. Applicant received an Associate Degree in 2009 and is working on her undergraduate degree. She has not previously had a trustworthiness determination, but she held a confidential level clearance beginning in 2008 for five years. (GE 2) She was unemployed from September 2013 to April 2014, but had previous employment in the defense contracting field from about 2008 until 2013. Applicant is single and has three children. (Tr. 12)

The SOR alleges, and Government exhibits (3 and 4) establish, 13 delinquent debts totaling over \$22,000. Applicant's salary is currently \$48,000 (the original salary was \$40,000), but after her unemployment, she was reduced to an hourly wage of \$12. She was pregnant with her third child at the time and the relationship with her significant other ended in 2016. (Tr. 17) When she lost the income from her significant other, she sold her house in 2016. Applicant rented an apartment, but had a higher rent to pay.

The debts that Applicant accrued began in about 2016. Her credit report shows that accounts were paid as agreed until that year. (GE 3) She had purchased a car but then became unemployed, and the car was repossessed. Applicant explained that she had chosen to pay her mortgage and could not afford the car payments. (Tr. 24) She had a debt-consolidation loan, but had to stop making payments due to the lower salary. She also had medical bills and household bills. Applicant realized that she could not make payments on these items and provide for her three children on one income. She contacted an attorney in late 2017, and he advised that she file for Chapter 7 bankruptcy to include all of her debts. (AE A) However, she could not afford the fee and sought another attorney and paid him \$1,200. (Tr. 50, AE D) Applicant filed for Chapter 7 bankruptcy in January 2019. As her post-hearing submission, Applicant submitted the April bankruptcy discharge document. (AE G)

During Applicant's 2018 investigative interview, she explained to the investigator that she had consulted an attorney and planned to file for bankruptcy. (GE 2) The debts in the SOR 1.k., l., and 1., m are the result of money owed to a state college. Applicant received grants, but she stopped attending classes due to her personal turmoil. Her financial situation prevented her from paying these debts and she has not been able to return to school until they are satisfied. The grants amount to \$3,500. She wanted to drop the courses but it was too late in the semester to withdraw. (Tr. 33) Applicant stated that she had made some payments on the grants.

Applicant disclosed that she does receive some child support from the children's father. She had to purchase another car and is current on the payments. She has not

made any large purchases in the past three years. (Tr. 40) She has a budget and does not go on any vacations. Applicant has no credit cards. Applicant now has health insurance. She hopes to buy another house for her children. She received financial counseling as part of her bankruptcy process. All of the debts listed on the SOR have been included in the bankruptcy.

Applicant submitted letters of reference from her current supervisor and her former supervisor, (AE E, F) who both praise her work ethic, trustworthiness and integrity. Applicant is also praised for the variety of tasks that she has worked on, including some with sensitive information. She has followed the rules, policies and procedures with respect to the information. Finally, Applicant is described as a loyal worker.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of eligibility for a public trust position. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.²

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, and Applicant has mitigated the security concerns. Applicant's delinquent debts started with unemployment and underemployment and the separation and loss of her significant other's income. She supported three children and paid her bills before the 2016 separation. She sold her house and used some of the portion proceeds of her share to rent an apartment for her family. Her security deposit and rent increased.

Applicant meets the mitigating conditions for financial considerations. given that she sought legal advice and decided to file for bankruptcy. She found an attorney who charged her a lesser fee and that took time. She paid \$1,200 and filed the bankruptcy petition in January 2019. She explained this to her investigator during her 2018 interview. The bankruptcy has been discharged. Applicant received financial counseling as part of that process. She has a budget and lives within her means. She does not take any vacations.³ She experienced circumstances beyond her control, and acted responsibly under the circumstances. She has full time employment.⁴ Applicant has had financial counseling. She submitted proof of her bankruptcy discharge. This is a legal means to resolve debt. Her earlier credit report shows that she had the majority of her accounts "pays as agreed."⁵ Finally, she provided work and character evidence which supports a whole-person assessment to overcome the trustworthiness concerns raised by his conduct. Accordingly, I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs 1.a- 1.m:	For Applicant

³§20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁴§20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

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

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position is granted.

Noreen A. Lynch
Administrative Judge