



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



In the matter of:)
)
 [REDACTED]) ADP Case No. 18-02855
)
 Applicant for Public Trust Position)

Appearances

For Government: Liam M. Apostol, Esq., Department Counsel
For Applicant: *Pro se*
06/21/2019

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted an application for a public trust position (PTA) on March 7, 2018. On December 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 on January 22, 2019, and requested a decision on the record without a hearing. On March 15, 2019, the Government sent a complete copy of its written case to Applicant, consisting of a file of relevant material (FORM) including documents identified as Items 1 through 5. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on March 20, 2019, and timely submitted her response, to which the Government did not object. Items 1 and 2 are the pleadings in the case. Items 3 through 5 are admitted into evidence. Applicant's

FORM response included a copy of the FORM, Item 2, and Item 5, which was already part of the record. She also submitted three new documents, which are admitted into evidence as Applicant Exhibits (AE) A through C. The case was assigned to me on May 31, 2019.

Findings of Fact

Unless otherwise indicated by citation to another part of the record, I have extracted the below findings of fact from Applicant's SOR answer (Item 2) and her PTA (Item 3).

Applicant, age 39, has one adult child and one minor child. She has never married. She earned an associate's degree in 2008. She has been employed by a federal contractor as an accounting clerk since March 2018. She has not had any periods of unemployment during the last ten years. This is her first application for a position of trust.

Applicant admits each of the nine debts alleged in the SOR, including \$4,967 for federal taxes; \$3,180 for state taxes; \$20,834 for federal student loans; and \$11,764 for six credit card accounts.

Applicant established installment agreements to repay her federal taxes in 2017 and 2018. Her balance as of October 2018 was \$4,731. She has made timely payments pursuant to those agreements through March 2019. (AE A; Item 5 at 2-3, 19, 23, 24, 25, 27, and 28).

Applicant established a payment plan to repay her state taxes in July 2018, at which time a 2014 overpayment of \$307 was applied to her balance. She renewed her payment plan in April 2019 with monthly payments of \$50 to begin May 2019. Her balance as of April 2019 was \$3,424. The record does not establish that any payments have been made pursuant to either agreement. (AE C; Item 5 at 31, 51-52).

Applicant initiated action to repay her student loans beginning with \$50 monthly payments in March 2018, which she timely paid through October 2018. In October 2018, she formalized a \$50 monthly payment plan. The record does not establish that any payments have been made since October 2018. (Item 5 at 54 and 56).

Applicant engaged the services of a debt-relief company and established a plan to repay her credit-card debt in March 2018. She has timely paid \$252 per month pursuant to that plan through April 2019. As of November 2018, two of the alleged debts (SOR ¶¶ 1.g and 1.h) had been resolved. The record does not establish the status of the remaining debts. (AE B; Item 5 at 57-62, and 67-68).

Applicant attributed her financial indebtedness to a period between approximately 2012 and 2018 when her expenses exceeded her income due primarily to increased commuting expenses, and to credit-card debt that she incurred to aid a friend in need, who reneged on a promise to help her repay that debt. Between 2012 and 2014, after a relocation, Applicant experienced increased expenses associated with an extraordinarily

long commute for routine visits with her children. Between 2014 and 2015, after she moved to the same town as her children, she continued to experience expenses associated with an extraordinarily long commute to work. In 2015, she became employed in the same town in which she and her children lived, but her income did not suffice to meet her monthly expenses. After becoming gainfully employed in March 2018, she had sufficient funds to address her delinquent debts. (Item 5 at 8; Item 3 at 37).

Applicant's income is now sufficient to meet her monthly expenses, including the payment arrangements that she established to repay her delinquent debts. She believes that it is important to repay her debts and intends to continue making the payments that she promised to her creditors. (Item 5 at 18-19).

Policies

Positions designated as ADP I and ADP II are classified as sensitive 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. (Directive, § 3.2).

When evaluating an applicant's eligibility for a position of trust to support a DOD contract, an administrative judge must consider the disqualifying and mitigating conditions in the AG. (Directive, Enclosure 2). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

In addition to the guidelines, the Directive sets forth procedures that must be followed in trustworthiness adjudications. The Government must present evidence to establish controverted facts alleged in the SOR. Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. An applicant has the ultimate burden of persuasion to establish their eligibility for a public trust position. (Directive, Enclosure 3, ¶¶ E3.1.14, E3.1.15). 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 national security eligibility will be resolved in favor of the national security." 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 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. 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

This concern is broader than the possibility that a person might knowingly compromise sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's failure to timely pay federal and state income taxes, federal student loans, and credit-card debts establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to pay annual Federal, state, or local income tax as required").

The trustworthiness concerns raised in the SOR have been mitigated by the following applicable factors:

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant initiated action to resolve her delinquent debts before issuance of the SOR. She has established a meaningful track record of regular and timely payments, and

her actions demonstrate that she will follow through with her agreements to repay her remaining delinquent debts. Given the facts and circumstances underlying the debts alleged in the SOR, and in light of the responsible manner in which she has addressed them, I conclude that they are not likely to recur. Applicant is otherwise managing her finances responsibly. While she is not currently debt-free, I do not find that her finances cast doubt on her current reliability, trustworthiness, or good judgment. ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given [her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct” that is, actions which evidence a serious intent to effectuate the plan).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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 have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by her failure to timely pay federal and state income taxes, federal student loans, and credit-card debts. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for a public trust position.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.i: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is granted.

Gina L. Marine
Administrative Judge