



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



In the matter of:)	
)	
)	ADP Case No. 19-00043
)	
Applicant for Public Trust Position)	

Appearances

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

07/15/2019

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 denied.

On January 30, 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations. Applicant timely answered the SOR, requesting a case decided on the written record in lieu of hearing. DoD 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.

Department Counsel submitted the Government’s file of relevant material (FORM) on April 18, 2019. Applicant received the FORM on May 14, 2019. The Government’s evidence, included in the FORM, and identified as Items 1 through 6, is admitted without objection. Applicant provided a response to the FORM. The case was

assigned to me on July 9, 2019. Based on the review of documentary evidence, I find that Applicant has not mitigated the security concerns under the trustworthiness guideline.

Findings of Fact

Applicant admitted the SOR financial allegations in SOR 1.a-1.i. She is a 40-year-old employee of a defense contractor, for whom she has worked for approximately ten years. Applicant received an Associates Degree in 2007. (Item 3) She has not previously had a trustworthiness determination. (Item 3) Applicant reported unemployment from August 2006 until July 2007. She has been steadily employed since 2007. Applicant is divorced and has no children. (Item 3) Applicant submitted an application for a public trust position on December 6, 2017.

The SOR alleges, and Government exhibits (5 and 6) establish, 12 delinquent debts totaling over \$34,000. The majority of the debts are student loans and auto loans. The delinquent debts include medical accounts and consumer loans. (Item 1)

The debts that Applicant accrued began in about 2016. In her OPM interview, she stated that procrastination is the cause of the debts. Some debts she was not aware of and some debts, 1.k. through 1.i, she stated were paid. (Item 4) Her credit report shows that some of the accounts were paid as agreed until that year. (Item 6)

During Applicant's 2018 investigative interview, she explained to the investigator that she was seeking credit counseling and acknowledged most debts. She noted that she would investigate the unknown debts and stated a general intent to pay her debts. Applicant began working with a consultant, but in her response to the FORM noted that she was not happy with the results. (Item 4)

In response to the FORM, Applicant submitted a copy of her debt negotiation agreement with a debt relief company, which was signed on June 7, 2019. There was no information in the agreement that showed which delinquent accounts were included nor the terms and conditions of payment. It does, however, note a monthly deposit to the company for \$469 starting on July 6, 2019. She did not submit any documentation that the payment was made. As to the 2015, state tax lien in the amount of \$2803, (SOR 1.g) Applicant stated that she was not aware of this lien, but would begin working to resolve the issue.

Applicant provided no information concerning her salary, budget, or documentary proof that she has paid any debts. She noted that she intends to pay 60% of her debt by the year 2020.

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.¹

Analysis

The Government established a case for disqualification under Guideline F, and Applicant has not mitigated the security concerns. Applicant's delinquent debts started with procrastination. Applicant's admissions corroborated with her credit reports, and failure to provide any documentation of payments, establishes two disqualifying conditions under this guideline. AG ¶¶ 19(a) and 19(c) apply. She has a history of not meeting financial obligations and an inability to pay debts.

Applicant does not meet any of the mitigating conditions (AG ¶¶ 20(a-d) as she still has delinquent debt, did not provide any circumstances beyond her control for the debt, has not received financial counseling and yet has initiated an effort recently to work with a debt relief company, she has not shown a good-faith effort in the past to repay overdue creditors or otherwise resolve debts. She claimed she paid some small debts, but provided no evidentiary evidence. In her 2018 interview, she promised to investigate the debts, but has not provided sufficient information to confirm her intention. There is no information in the record concerning her salary. AG ¶ 20(a-d) It is impossible to know if she is financially stable. She has furnished insufficient information to meet her burden. None of the mitigating conditions apply. None of the information in

¹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

the record supports a whole-person assessment to overcome the trustworthiness concerns raised by her conduct. Accordingly, I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a- 1.l: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not 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 denied.

Noreen A. Lynch
Administrative Judge