



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



In the matter of:)
)
) ADP Case No. 19-00161
)
Applicant for Public Trust Position)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

08/01/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On February 1, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on February 15, 2019, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on May 23, 2019. The evidence included in the FORM is identified as Items 2-6 (Item 1 includes pleadings and transmittal information). The FORM was mailed to Applicant, who received it on June 4, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections or submit

evidence. Items 2-6 are admitted without objection. The case was assigned to me on July 18, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations (SOR ¶¶ 1.a-1.bb). Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 41-year-old employee of a federal contractor. She has worked for this employer since July 2016. She was unemployed from September to November 2015. She is a high school graduate and has earned some college credits. She married in 1998 and has one minor child. (Items 2-3)

The SOR alleged Applicant filed for bankruptcy in 2010 and owed 25 delinquent debts totaling approximately \$46,152. The debts included a repossessed vehicle, consumer debts, and medical debts. The allegations are supported by credit reports from November 2017, December 2018, and May 2019; her answers to questions from a defense investigator in April 2018 (PSI); and admissions in her SOR answer. Her answer claimed that SOR ¶¶ 1.c, 1.s, and 1.t are all from the same underlying debt. Credit report information supports her assertion. SOR ¶¶ 1.s and 1.t are resolved in favor of Applicant. Additionally, SOR ¶¶ 1.l-1.n and 1.p-1.q are medical debts that do not name a specific creditor. Those allegations provide insufficient notice to Applicant regarding the nature of those debts. They are resolved in favor of Applicant. (Items 1-6)

Applicant explained that she got behind on her debts because of her underemployment (making hourly wages) and medical issues in 2000. She also claimed her husband, who is also an hourly wage earner, lost his job several times before four years ago when he secured a better job. She was the sole wage earner during his unemployment. She then lost her job in the fall of 2015. Thereafter, she started her own business, using credit cards to finance it. That business failed leaving her with a large debt. She claims that she has made arrangements to pay the medical debts listed in SOR ¶¶ 1.x-1.bb, but she failed to provide supporting documentation. As for the remaining debts, she did not provide any documentation showing that she had paid any of the debts, or that she had entered into any payment agreements with any creditors. Applicant did not provide any information about her current financial situation or a budget. Other than the debts resolved as described above, her remaining debts are unresolved. (Items 1 (answer), 3)

Policies

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 national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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. 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.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had debts discharged through a Chapter 7 bankruptcy in 2010 and incurred 25 delinquent debts that remain unpaid. I find both of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

None of the above mitigating conditions fully apply. Both Applicant and her husband had periods of unemployment and she experienced medical issues, but she failed to present evidence that she acted responsibly in addressing her delinquent debts. She presented no evidence of taking any action to contact creditors, set up payment plans, or pay the debts. There is no evidence of financial counseling. She failed to establish a track record of financial responsibility. Duplicate debts and unnamed medical debts are resolved in favor of Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information by considering the totality of the applicant's conduct and all relevant 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 access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's and her husband's unemployment and her medical issues. However, Applicant failed to produce evidence of any action taken to address her delinquent debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not mitigated the financial considerations 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: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.k:	Against Applicant
Subparagraphs 1.l – 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p – 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraphs 1.s – 1.t:	For Applicant
Subparagraphs 1.u – 1.bb:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge