



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



In the matter of:)
)
) ADP Case No. 19-00552
)
Applicant for Public Trust Position)

Appearances

For Government: Liam M. Apostol, Esquire, Department Counsel
For Applicant: *Pro se*

07/24/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's eligibility for a public trust position.

On 18 March 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR (Item 1) and requested a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in

¹Consisting of the File of Relevant Material (FORM), Items 1-4, and Applicant's Response to the FORM (Response).

²DoD 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.

this case closed 23 May 2019, when Department Counsel stated no objection to Applicant's Response to the FORM. DOHA assigned the case to me 3 June 2019.

Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.e and 1.l-1.m, which she disputes. She is a 43-year-old payment records adjuster sponsored for a public trust position by a defense contractor, for whom she has worked since October 2017. Except for a brief period of unemployment from April-October 2016,³ she has been continuously employed since January 2005. She married her first husband in July 1995 and divorced him in June 2014. They had three children together: a son born in October 1995, a daughter born in January 1998, and a son born in February 2003. She married her second husband in August 2014, and separated from him in March 2016. She has not previously had a trustworthiness determination (Item 2).

The SOR alleges, and Government exhibits (Items 2-4) establish, 22 delinquent debts totaling over \$64,000. Applicant admits all but about \$1,700 in alleged debt. Applicant disclosed SOR debts 1.g-1.j, 1.m, and 1.r-1.v on her November 2017 trustworthiness application (Item 2), totaling a little over \$4,600. Of the ten debts she listed, seven were medical bills, two were debts to a former employer, and one was a delinquent utility bill that she stated she would pay within the next three months. Five of the debts she disclosed, and four of the seven medical debts, were \$200 or less. Two of the medical bills were under \$100. Yet, none of the bills were resolved between November 2017 and the issuance of the SOR.

In addition to these debts, the SOR alleges eight delinquent education loans totaling over \$57,000, another delinquent utility bill, a delinquent credit card, a delinquent insurance bill, and an additional bill from a former employer.

Applicant's Response submitted an April 2019 rehabilitation agreement from the collection agent for the education loan authority, showing that the delinquent loan balance on the eight loans had risen to over \$69,000, and obligating Applicant to make nine \$5.00 monthly payments beginning in April 2019, if she agreed to the plan.⁴ The Response also included a partial, undated credit report purporting to show that Applicant had disputed several of the delinquent debts as claimed in her Answer.

Applicant broadly ascribes her financial problems to a long divorce, becoming a single mother of three, losing her job, and not having insurance coverage for any of the medical bills, some of which were related to her children. However, the record lacks

³Applicant lost her job when the employer closed the location where she worked, and all the employees were laid off.

⁴When Applicant signed the agreement, the first payment had been due for two weeks, yet Applicant provided no proof of payment from the collection agent, bank statement showing a withdrawal in the required amount, or a copy of the check used to make the payment.

factual support for these claims. Three of the debts fell delinquent before Applicant's divorce. Another six fell delinquent after she remarried and before she separated from her second husband. The education loans fell delinquent in February 2017, after she had obtained new employment.

Applicant has not explained the time line of her financial journey, the reasons for her divorce and separation, or any provisions of the divorce decree obligating the ex-husband to provide support for his minor children.⁵ Moreover, while Applicant's Answer lists time lines for resolving many of the debts, ranging from 1-18 months, she provided no repayment agreements from the creditors, nor did she explain why no apparent action was taken on her debts until after she received the SOR.

Applicant provided no budget or personal financial statement indicating her financial situation. She has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community involvement.

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.

⁵For example, if her employer was closing Applicant's work location, there was almost certainly some advance notice, yet Applicant separated from her second husband on the eve of her layoff. Without knowing the circumstances of her separation, I cannot assess whether the separation was reasonable, even if the layoff was unavoidable. Similarly, there is no evidence of any efforts by Applicant to find new employment in the face of her impending layoff. When these events occurred, her children were not of tender years.

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.⁶

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Between October 2012 and February 2017, Applicant accumulated what is now over \$76,000 in delinquent debt. She was aware of at least \$4,600 of the debt when she completed her trustworthiness application in November 2017. Yet, she has documented no action to address these debts until after she received the SOR.⁷ And none of the debts, however small, have been paid.

Applicant meets none of the mitigating conditions for financial considerations. given that she has provided no details about her delinquent debts or the circumstances surrounding them.⁸ While some of the debts may be due to circumstances beyond her control, she did not deal with the debts responsibly under the circumstances.⁹ Applicant has had no credit or financial counseling; she has documented no efforts to resolve her debts before receiving the SOR.¹⁰ Moreover, she has obviously not engaged in a good-faith effort to address her debts.¹¹ Finally, she provided no work or character evidence which might support 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 a-v:	Against Applicant

⁶See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so;(c) a history of not meeting financial obligations;

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

⁹¶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;

¹⁰¶20(c) the person has received or is receiving counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

¹¹¶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 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 denied.

JOHN GRATTAN METZ, JR
Administrative Judge