



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



In the matter of:)
)
) ADP Case No. 19-02087
)
Applicant for Public Trust Position)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to demonstrate financial responsibility or that her financial problems are being resolved. She failed to mitigate the Guideline F (financial considerations) trustworthiness concerns. Eligibility to hold a position of trust is denied.

Statement of the Case

Applicant submitted an application for a position of trust (Application) on October 4, 2018. She was interviewed by a government investigator on March 7, 2019. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 31, 2018, alleging trustworthiness concerns under Guideline F (financial considerations). Applicant answered the SOR on August 28, 2019, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), containing the evidence supporting the trustworthiness concerns, was provided to Applicant by letter dated September 20, 2019. Applicant received the FORM on October 2, 2019. She was

granted a period of 30 days after receipt of the FORM to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant timely responded to the FORM with a three-page submission, which included a one-page response, a notice of termination of owner beneficiary rights regarding an account, and a reference letter. Her response and the two documents were made part of the record. The case was assigned to me on October 28, 2019.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of interview with a government background investigator on March 7, 2019. (FORM, Item 5) Applicant was informed she could object to the summary of her interview, and it would not be admitted or considered, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered. I admitted the FORM's proffered evidence and considered it.

Findings of Fact

In her SOR answer, Applicant admitted the financial allegations in ¶¶ 1.a through 1.d. She denied SOR ¶¶ 1.e and 1.f, claiming that she had paid both accounts. Her admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 38-year-old registered nurse. She completed her bachelor's degree in May 2004. She married in 2011, and has two children ages 12 and 2, and five step-children between ages 24 and 19.

Applicant's employment history shows that she was employed as a nurse in different hospitals between 2004 and October 2018. She was hired by her current employer, a federal contractor and her position of trust sponsor, in October 2018, and has been working as a telehealth nurse to present. This is Applicant's first position of trust application.

In response to Section 26 (Financial Record) of her 2018 SCA, Applicant disclosed she had financial problems caused by a fifty percent reduction in pay. She voluntarily resigned from a well-paid position in 2013, and moved to another state to take care of her ailing mother. Additionally, she was unemployed or underemployed during five months in 2016 due to a disabling leg injury, and one month underemployed because of pregnancy complications. She delivered a child in 2017 and was out of work for about four months on maternity leave. In her SCA, Applicant promised to establish payment arrangements with her creditors as soon as possible.

During her 2019 interview with a government investigator, Applicant was questioned about the accounts alleged in the SOR. She explained that her 2013 fifty

percent reduction in pay and her periods of unemployment and low earnings prevented her from paying her debts. Applicant stated that she was unable to pay the SOR delinquent accounts because she has been trying to recover financially from her income decrease and unemployment-underemployment periods. She claimed that she intends to pay her delinquent accounts by establishing payment plans with her creditors during 2019.

SOR ¶ 1.a alleged a delinquent auto loan account for \$40,000 that she made in early 2012. Applicant averred that she made timely payments on the loan until February 2013, when she could no longer afford to make the payments and returned the car. The car was sold, and she has a remnant debt of about \$10,000. She has not made any additional payments on the loan. The last collection efforts by the collection agency were made in 2017. Applicant stated that she is not sure whether she wants to pay the account because it is not listed as open in her credit report.

SOR ¶ 1.b alleged a delinquent credit-card account. Applicant opened the account in 2011-2012 allegedly to build up her credit. The account had a limit of \$1,000. Applicant charged the account and her minimum payment was \$15. When she moved to another state, her income was reduced and she stopped making payments. She did not pay her delinquent charges. Applicant stated that according to her credit report the account was closed. Thus, she does not intend to make any payments on his debt unless the creditor demands repayment.

SOR ¶ 1.c alleged a delinquent auto loan. Applicant purchased the car with her husband as a co-signer in early 2013 for \$23,000. She averred they made timely payments on the loan until March 2017, when she could no longer afford to make the payments and returned the car to the creditor. She has not made any additional payments on the loan. Applicant claimed she attempted to contact the creditor in October 2018 to set up a payment plan, but was unsuccessful. Because the creditor did not return her calls, Applicant is now disputing the debt. She claimed that she would like to set up a payment plan

Concerning SOR ¶ 1.d, Applicant explained that this was an account for telephone services that she opened when she was 28 (2009). She claimed she always paid her bill on time until January 2016, when she had to stop making payments because the reduction of her income. She presented no evidence of any payments made or of efforts to contact the creditor to resolve this account.

SOR ¶ 1.e alleged a delinquent internet-cable-phone services account. Applicant claimed she made payments on the account until January 2017. She stopped making payments because she could no longer afford the payments. Applicant promised the interviewer that she would contact the company and pay the debt. With her SOR answer, Applicant submitted an extract from CreditKarma.com, showing that the accounts has a \$0 balance. I find this account for Applicant.

SOR ¶ 1.f alleged a \$378 delinquent medical-services account. Applicant told the investigator that she believed it was part of her child-delivery charges. She promised to contact the company and pay the debt. With her SOR answer, Applicant submitted an extract from CreditKarma.com, showing that she paid a law office (presumably collecting for the account holder) a balance of \$378. I find this account for Applicant.

Except for the two Credit Karma documents indicating that the accounts alleged in SOR ¶¶ 1.e and 1f had a \$0 balance, Applicant presented no documentary evidence of any contacts with creditors, payments made, or payment agreements established concerning any of the SOR debts. She promised to address the SOR debts sometime in the near future.

Applicant claimed that her current financial situation is better because she now has a higher paying job. She claimed that her money is spent in “maintaining and paying off debt.” She averred that she is meeting her current financial obligations, and that she has no intention to acquire any additional delinquent debts.

Applicant believes that she has been financially responsible because her accounts became delinquent after she relocated and her income was reduced, and because she was unemployed or underemployed because of her injury and maternity leave. Applicant claimed she is willing to repay her debts. She promised to start paying her debts in 2019 because currently she has the income to do so.

Applicant presented no documentary evidence about her current financial situation (her and her husband’s monthly income, living expenses, current debts, savings, monthly remainder, etc.). She did not present evidence to show that she has a working budget or that she has participated in financial counseling.

Policies

In issuing the SOR, DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive);¹ and the *National Security Adjudicative Guidelines* (AG) promulgated by Directive 4 of the Security Executive Agent, effective June 8, 2017.

The DOD considers ADP positions to be sensitive positions. For a person to be eligible for sensitive duties, the person’s loyalty, reliability, and trustworthiness must be such that assigning the person to a sensitive position is clearly consistent with the national security interests of the United States. SEAD 4, E(4); SEAD 4, App. A ¶ 2.d. Applicants for ADP positions are entitled to the procedural protections in the Directive before any final unfavorable access determination is made.

When evaluating an applicant’s suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG.

¹ ADP cases are adjudicated under the provisions of the Directive. (Deputy Under Secretary of Defense’s Memorandum for the Director, DOHA, dated November 19, 2004.)

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A public trust position decision resolves whether it is clearly consistent with the interest of national security to grant or continue an applicant's access to sensitive information. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national security interest of the United States to grant or continue his or her access to sensitive information.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national security as their own. The "clearly consistent with the national security interest of the United States" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. Access to sensitive information determinations should err, if they must, on the side of denials. SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Eligibility for a public trust position decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing access to sensitive information.

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern relating to financial problems:

Failure or inability 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 [trustworthiness] 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

Applicant's financial problems are documented in the record. The delinquent debts alleged in the SOR are established by her admissions. She averred her financial problems resulted from her resignation from a high-paying nursing position and relocating to another state to help her ailing mother in 2013, and periods of unemployment or underemployment resulting from an injury (five months) and child-delivery (four months). Except for the periods of unemployment discussed above, Applicant has been fully employed with hospitals since 2004 and with a federal contractor since October 2018. AG ¶ 19 provides disqualifying conditions that could raise a trustworthiness concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

I considered the seven financial considerations mitigating conditions under AG ¶ 20; however, only one is potentially applicable:

(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.

The Appeal Board concisely explained an applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's [position of trust] eligibility, there is a strong presumption against the grant or maintenance of a [position of trust]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [trustworthiness] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

The AG ¶ 20(b) financial considerations mitigating condition is not fully raised by the facts in this case and does not mitigate the trustworthiness concerns.

Applicant's financial problems started in 2013, and are ongoing and unresolved. Applicant's evidence is sufficient to establish that circumstances beyond her control contributed to her financial problems: 1) she having to relocate to help her ailing mother; 2) a five-month period of disability due to a foot injury; and 3) a four-month period of maternity leave. (Applicant presented no evidence and it is not clear from the evidence

whether she received disability compensation, and whether she received pay while on maternity leave.)

Even giving the benefit of the doubt to Applicant on the above issues, she failed to establish that she has been financially responsible under the circumstances. She did not present sufficient evidence of good-faith efforts to pay her debts; that she has been in contact with her creditors, of any payments made since she acquired the debts, of any payment agreements, disputed debts, or of efforts to otherwise resolve her delinquencies.

I considered that Applicant resolved the accounts alleged in ¶¶ 1.e and 1.f after she received the SOR. However, I consider her last minute efforts too little and too late to establish a track record of financial responsibility. I also considered that Applicant disputed some debts, but she failed to provide documentary evidence to establish a reasonable basis for her disputes.

Applicant testified that her financial situation has improved with her current job and that she now has the financial means to pay any delinquent debts. Notwithstanding, she provided little information about her current earnings and financial position. She did not provide any information about her monthly income and expenses, and whether her current income is sufficient to pay her current living expenses and debts. There is no information to show that she participated in financial counseling or that she follows a budget. The available information is insufficient to establish clear indications that she does not have a current financial problem, or that her financial problem is being resolved, or is under control. Applicant failed to establish that she has a track record of financial responsibility.

Considering the evidence as a whole, Applicant's evidence is insufficient to demonstrate financial responsibility or that his financial problems are being resolved. The financial considerations trustworthiness concerns are not mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment:

Applicant, 38, has been employed with hospitals since 2004 and with a federal contractor since October 2018. This is her first position of trust application. Her evidence is insufficient to establish a track record of financial responsibility. It is well settled that once a concern arises regarding an applicant's trustworthiness, there is a strong presumption against granting eligibility for a position of trust. Unmitigated

financial considerations trustworthiness concerns lead me to conclude that granting eligibility for a position of trust to Applicant is not warranted at this time.

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.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for a public trust position. Eligibility for a public trust position is denied.

JUAN J. RIVERA
Administrative Judge