



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 19-01588
)
Applicant for a Public Trust Position)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*
03/04/2020

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility to work in a public trust position in the defense industry. Although Applicant mitigated the personal conduct concerns alleged in the Statement of Reasons (SOR), she failed to mitigate the concerns raised by her history of ongoing financial problems and unresolved delinquent debts. Her request for eligibility to occupy a position of trust is denied.

Statement of the Case

On June 21, 2019, the DOD issued a SOR detailing security concerns under the financial considerations and personal conduct guidelines. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Review Program* (Jan. 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), effective June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant public trust eligibility.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on October 7, 2019. A complete copy of the file

of relevant material (FORM) along with 11 attachments, and a copy the Directive were provided to Applicant. She received the FORM on November 19, 2019. In response, Applicant submitted six documents. Department Counsel objected to the submissions, but did not provide a basis for the objection. The attachments to the FORM are admitted to the record as Government's Exhibits (GE) 1 through 11, without objection. Applicant's documents are admitted as Applicant's Exhibits (AE) A through F, over Department Counsel's unspecified objection.

Evidentiary Matters

The SOR alleges that Applicant has two delinquent student loans with the Department of Education. In her October 2017 security application, Applicant disclosed taking online classes at a for-profit university. The university ceased operations in March 2016 after having its accreditation withdrawn by the Accrediting Council for Independent Colleges and Schools (ACICS). Information about the school closure and its effect on Applicant's student loan repayment obligations are necessary to consider in this case; however, neither party offered any evidence on the issue. Accordingly, I have considered information from the following sources:

<http://www.westwood.edu/>;

http://www.westwood.edu/Westwood_Acknowledgement_of_Campus_Closures.pdf; and

<https://studentaid.gov/manage-loans/forgiveness-cancellation/closed-school#criteria>.

Findings of Fact

Applicant, 31, has worked for her employer, a federal contracting company responsible for administering medical benefits and claims for the TRICARE Program, since September 2017. Her position requires access to personally identifiable information. (GE 4)

Applicant completed a security clearance application in October 2017. She did not disclose any derogatory information in response to questions seeking information about her criminal history in the seven years preceding the application. The investigation revealed that a criminal complaint was filed against Applicant in May 2016. Based on this information, the SOR alleges that Applicant deliberately failed to disclose that she was "arrested/charged with misdemeanor assault and battery on about May 31, 2016." Applicant maintains that she was never arrested and that she never appeared in court to answer the charges. She spoke to a defense attorney who contacted her about the case and explained the events leading up to the criminal complaint. The court record supports Applicant's story. According to the GE 11, a case detail record, an individual filed a criminal complaint against Applicant on May 31, 2016, almost two months after the alleged incident date. The record indicates that Applicant was "released on summons," indicating that she had notice of the criminal complaint and the

potential criminal charges. The record also indicates that an arraignment hearing was scheduled in June 2016, but that it was continued without explanation. The court dismissed the criminal complaint with prejudice at the second hearing in July 2016 either on its own volition or by motion of the prosecutor. The record indicates that Applicant was never arrested or formally charged with any crime. (GE 3-4, 11; AE A)

In response to the financial history questions on the October 2017 security clearance application, Applicant disclosed two delinquent accounts: a \$600 judgment she resolved in March 2017; and a utility account she believed was opened fraudulently in her name. However, the background investigation revealed numerous delinquent accounts. During a March 2018 background interview, Applicant volunteered information about two additional delinquent accounts: a March 2017 car repossession (1.d, \$2,818) and a medical debt collection in the summer of 2017 for approximately \$400. The investigator then confronted Applicant with evidence of 26 delinquent accounts, including seven judgments, another vehicle repossession (1.n, \$26,195), and two student loan accounts (1.v and 1.w, totaling \$15,161). According to the interview summary, Applicant told the investigator that she recognized some of the accounts, but could not provide the investigator with additional information about them. The SOR alleges that Applicant owes over \$56,700 for 23 accounts and that she deliberately failed to disclose a judgment and 16 accounts that were delinquent at the time she completed the September 2017 security clearance application. In her answer to the SOR, Applicant admits the debts alleged in SOR ¶¶ 1.a, 1.e – 1.i, 1.k – 1.l, and 1.n – 1.w, and denies the debts alleged in SOR ¶¶ 1.b - 1.c, 1.j, and 1.m. She provided qualified admissions to falsification allegations at SOR ¶¶ 2.b (deliberate failure to disclose judgment alleged in SOR ¶ 1.a) and 2.c (deliberate failure to disclose 16 delinquent accounts). (GE 3-5, 7-10)

Applicant states that her financial problems began in 2011 when she unexpectedly moved to her home state to care for her now-deceased younger brother. She attributes SOR ¶ 1.u (\$484) to this time. She also blames the debts alleged in SOR ¶¶ 1.e, 1.h, 1.j, 1.n, 1.o 1.q, and 1.r, totaling approximately \$29,900, on the dissolution of her marriage. Applicant and her husband are separated. The record does not specify how long the couple has been separated or provide any information about the financial terms of the separation. Applicant admits that she and her husband purchased the car alleged in SOR ¶ 1.n (\$26,195) together, but that he retained the car after their separation. Applicant stated in her interview that she did not know when the car loan became delinquent. It is unclear if she was aware of the repossession before the background interview. Applicant states that she is financially responsible for her two children, ages 11 and 13. It is unclear if Applicant receives any child support from her estranged husband. Of the 23 debts alleged, 5 debts (SOR ¶¶ 1.f, 1.i, 1.k, and 1.l) totaling approximately \$1,100 became delinquent after she completed her September 2017 security clearance application. (GE 3, 5; AE A)

Applicant claims that she is no longer responsible for the debts alleged in SOR ¶¶ 1.a (\$3,433), 1.r (\$280), and 1.v (\$9,925), and 1.w (\$5,236). According to Applicant, an unspecified court ordered her former employer to pay the judgment alleged in SOR 1.a after the employer failed to garnish her wages in violation of a previous court order.

She claims that she is no longer responsible for the student loan debts alleged in SOR ¶¶ 1.v and 1.w because they were resolved as part of a lawsuit against the school. Between April and June 2009, Applicant attended a for-profit college that ceased operations in 2016 after losing its accreditation. As a result of the closure, the U.S. Department of Education, servicer of the alleged student loans, provided for student loan relief to former students who met the criteria of its loan discharge program. However, Applicant did not provide evidence that she qualified for the program, the criteria of which goes beyond mere enrollment in the now-defunct school, or that she applied for relief. Applicant also claims that she is not responsible for the utility account debt alleged in SOR 1.i (\$321), claiming a family member opened the account in her name without her permission. However, she did not provide any documentation showing that she has disputed this account with the creditor. (GE 3; AE A)

Applicant claims to have resolved the judgment alleged in SOR ¶1.b (\$749). Although she provided copies of two money order receipts showing \$400 payments, the receipts do not establish the payee. Applicant did not offer any documentation regarding the other debts alleged in the SOR and they remain unresolved. (AE A – B)

Applicant does not believe that she is financially unstable. She acknowledges that she has delinquent debt, but is trying to resolve it “the right way.” She is considering filing for bankruptcy protection, but did not provide a plan for resolving her delinquent accounts. (AE A)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(c), 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 access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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 information.” (AG ¶ 18).

The SOR alleges that Applicant owes over \$56,000 in unresolved delinquent debt. Applicant’s admissions as well as the credit reports and court documents in the record support the Government’s *prima facie* case that Applicant has a history of not meeting her financial obligations and an inability to repay her creditors. Financial considerations disqualifying conditions 19(a) and (c) apply. Applicant did not present sufficient documentation to mitigate the concerns. While providing care for her ailing brother and the dissolution of her marriage may have contributed to her financial problems, Applicant has not established that she has acted responsibly in light of her circumstances. Her finances are not under control. She accumulated at least \$1,100 in additional delinquent debt after completing her October 2017 security clearance application. Applicant did not present any evidence to show a good-faith effort to resolve her delinquent accounts, nor does she have plans for doing so. While Applicant may have established a legitimate basis for disputing the utility account in SOR ¶ 1.a and the student loan accounts in SOR ¶¶ 1.v and 1.w, she failed to provide documentation showing that she has taken action to resolve the issues. Accordingly, none of the financial considerations mitigating conditions apply.

Personal Conduct

The SOR also alleges that Applicant falsified her October 2017 security clearance application by deliberately failing to disclose a 2016 misdemeanor assault and battery charge, a 2013 judgment for \$3,433, and the existence of 16 delinquent accounts. Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15) Generally, evidence of omission alone is not sufficient to establish intentional falsification. Here, the record does not contain sufficient direct or circumstantial evidence of her intent to falsify her security clearance application. The record does not establish that Applicant was ever arrested or charged with a criminal offense, only that she was the subject of a criminal complaint that was ultimately dismissed. Therefore, she was under no obligation to report it on the security clearance application. Also, the record does not establish that Applicant was aware of the status of the delinquent debts

alleged in the SOR when she completed the security clearance application. While Applicant had an obligation to ensure her security clearance application contained full and complete disclosures, her failure to do so constitutes negligence. Her negligence is not evidence of her intent to deceive the government. Accordingly, the personal conduct allegations are resolved in Applicant's favor.

Based on the record, doubts remain about Applicant's eligibility to occupy a position of trust. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant failed to meet her burdens of production and persuasion to refute or mitigate the financial concerns raised in the SOR. She did not provide any evidence to show financial rehabilitation, reform, or that her finances are otherwise under control.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.w:	Against Applicant
Paragraph 2, Personal Conduct	FOR APPLICANT
Subparagraph 2.a – 2.c:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant access to sensitive information. Applicant's eligibility to occupy a position of trust is denied.

Nichole L. Noel
Administrative Judge