



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



In the matter of:)	
)	
)	ADP Case No. 19-01947
)	
Applicant for Public Trust Position)	

Appearances

For Government: Mary Margeret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2020

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the concerns posed by her troubled finances. Eligibility to continue working in a public trust position is denied.

Statement of the Case

On June 27, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the trustworthiness concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant her a position of trust. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On August 27, 2019 Applicant answered the SOR allegations, admitting all of them, and requesting a decision based on the administrative record instead of a hearing. On September 19, 2019, Department Counsel prepared a File of Relevant Material (FORM).

Applicant received the FORM on September 23, 2019 and was instructed to file any objections to this information, or supply additional information within 30 days. Applicant did not respond. The case was assigned to me on November 22, 2019.

Ruling of Evidence

Item 4 is an Office of Personnel Management record of Applicant's personal subject interview. Absent an applicant's consent, such documents are typically inadmissible. (Directive, E. 3.1.20) However, in ISCR Case No. 16-03126, decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary, the applicant filed no objection to it, and there was no indication that the summary contained inaccurate information. In this case Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the administrative judge to consider. (FORM at 2) She filed no objection. Consequently, I have incorporated Item 4 into the record.

Findings of Fact

Applicant is a 35-year-old married woman with one child, age 14. A previous marriage ended in divorce in 2018. She earned an associate's degree in April 2012, and is currently working as a customer service team lead. (Item 3)

The SOR alleges 17 delinquent debts totaling approximately \$29,330. Applicant admits all of the allegations, contending that she first fell behind on her debts in 2013 after she financed the purchase of a car with a high interest rate loan. (Item 4 at 54) The monthly loan payments proved to be higher than anticipated. Shortly after purchasing the car, Applicant's son required unexpected medical treatment, which generated more expenses. Consequently, she began falling behind on her debts. By June 2019, she had incurred 17 debts, totaling \$29,330. (Item 2) She asserts that she is making monthly payments towards the satisfaction of subparagraphs 1.c, 1.h, 1.k through 1.o, and 1.q. She provided no evidence supporting her assertion, nor did she elaborate on the current status of the remaining SOR debts.

Policies

When evaluating an applicant's suitability for a trustworthiness position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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 public trustworthiness 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. 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 to obtain a favorable trustworthiness determination.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concerns about financial considerations are set forth in AG ¶ 18:

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 information. . . .

Applicant’s delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving 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; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The untimely illness of Applicant's son, which occurred shortly after she admittedly overextended herself with the purchase of a car through a high interest rate loan, certainly constitutes a misfortune that was beyond her control. Conversely, Applicant produced scant evidence of her son's medical problems or the related expenses, nor any evidence supporting her contention that she is paying most of the SOR debts through payment plans or otherwise has them under control. Under these circumstances, none of the mitigating conditions applies, and Applicant has failed to mitigate the financial considerations security concern.

Whole-Person Concept

A comprehensive whole-person evaluation is predicated upon having adequate evidence to conduct such a determination. Applicant provided no evidence to corroborate her contention that she is paying her debts, nor did she elaborate on any of the circumstances surrounding the incurrence of her delinquent debt. Under these circumstances, consideration of the whole-person concept does not change my opinion.

Formal Findings

Formal findings for 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.q:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge