



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ADP Case No. 19-01965

Applicant for Public Trust Position

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel

For Applicant: *Pro se*

02/19/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is granted.

Statement of the Case

On August 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Statements of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guidelines F, financial considerations. The action was taken under 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.

Applicant answered the SOR on September 10, 2019, and requested a hearing before an administrative judge. The case was assigned to me on November 20, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 25, 2019, scheduling the hearing for January 14, 2020. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 3. Applicant

testified and offered exhibits (AE) A through K. There were no objections to any of the exhibits offered and all were admitted into evidence. The record was held open until January 28, 2020, to permit Applicant to submit additional documents. She timely submitted AE L through Q, which were admitted into evidence without objection (HE I). DOHA received the hearing transcript on January 23, 2020.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.c, 1.d, and 1.e. She denied the allegation in SOR ¶ 1.b. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 39 years old. She earned an associate's degree in 2012 and a bachelor's degree in 2013. She married in 2010. She has a four-year-old child. She began her current job in October 2017.

Applicant attributes her financial problems to a series of events. In April 2015, her daughter was born prematurely and weighed only one pound four ounces. Due to complications, Applicant was required to remain in the hospital for a week. The baby remained in the neo-natal unit of the hospital for five months. Because of her daughter's compromised immune system, she was required to drink special formula and had additional expensive medical procedures that were not completely covered by insurance. The medical expenses continued due to the numerous health problems her daughter developed. She is required to wear leg braces that need to be replaced often, sometimes every six months as she grows. These are not covered by Applicant's insurance and can cost more than \$400. She also has to wear eyeglasses that are not completely covered by insurance. Applicant must pay all of these required incidentals out-of-pocket.

Exacerbating Applicant's already fragile finances, in April 2016, her husband's vehicle was damaged beyond repair due to a hail storm, which required them to purchase a used vehicle to replace the one damaged. In September 2017, Applicant was fired from her job and was unemployed. She collected unemployment benefits. In October 2017, she started a new job. Her salary was less than her previous job. In February 2019, her husband was diagnosed with a serious neurological condition resulting in his hospitalization for two weeks. In March 2019, Applicant made an emergency trip to another state so she could be with her father before he passed away. All of these events significantly impacted Applicant's finances.

Applicant provided proof that she has recently resolved the debts alleged in SOR ¶¶1.c (\$790), 1.d (\$574), and 1.e (\$119). (Answer to the SOR; AE E, G)

Applicant testified that she has not made any payments toward the student loan alleged in SOR ¶1.a (\$19,081). She was aware she owed the loan, but did not have the income to pay it. She filed a request to have the loan forgiven. She attempted to contact the collection company which owns the loan, but can only reach an automated system

that cannot locate her account. When she speaks with a person, they cannot find her account either. As a result, she stated that she cannot arrange payments. Post-hearing she provided an email from the creditor from 2014 indicating the debt is a private student loan. (AE M)

Applicant stated in her answer to the SOR that the lender for her student loan in ¶ 1.b for \$3,883 was sued for predatory practices. She provided a copy of IRS Form 1098-E which shows interest she paid on the loan in 2014. She also provided a copy of a judgment against the creditor settling claims against it for “any student borrower” who received a loan that was not paid in full by June 14, 2019. The judgment also required the loans to be discharged and all outstanding balances of all affected customer loan accounts, including fees, charges, and interest be cancelled. Applicant testified that she researched the debt on its website and it said the creditor would not be accepting future payments. It appears this debt is unenforceable. (AE I, J).

Applicant provided an email dated January 8, 2020, from the “Borrower Defense Customer Service” indicating it was in receipt of her application to have her federal student loans discharged. A decision has not yet been made. (AE B).

Applicant has 14 student loans that are in forbearance. After her hearing, she submitted a request to have them consolidated and applied for an income-based payment plan. She estimated she owed more than \$86,000 for federal student loan. She anticipated the income-based plan would require her to pay \$187 monthly if approved. These delinquent loans are not alleged in the SOR. (AE L, N, O, Q)

Applicant submitted character letters. In them, she is described as trustworthy, reliable, honest, hard-working, courteous, dedicated, knowledgeable, professional, intelligent, generous, mature, efficient, competent, and friendly. She exercises sound judgment and has excellent decision-making skills. She is goal-oriented with a strong work ethic and positive attitude.

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining an applicant’s eligibility for a position of trust.

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.”

Directive ¶ E3.1.14, states that the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F: Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following is potentially applicable:

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

Applicant had delinquent debts and student loans that began accumulating in about 2015. She was unable to resolve them. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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.

Applicant began experiencing financial problems after the premature birth of her daughter in 2015. She then had a series of life events that included additional medical expenses associated with her daughter's health; a hailstorm that required the purchase of a replacement vehicle for her husband; a reduction in income; the hospitalization of her husband; and an emergency trip to see her father before he passed away. These events were beyond her control. Although it took her awhile to begin to address her financial problems, she has paid three of the SOR debts. She attempted to contact the creditor for a private student loan that she owed, but the creditor has been unable to find her account. She realizes she needs to continue to attempt to resolve this loan. A second private student loan company was sued for predatory practices and these loans are likely unenforceable. Applicant's finances are not perfect, and she is aware that her federal student loans that were in forbearance will need to be paid. However, she has made progress in addressing her debts and has an understanding of the importance of being financially responsible so she can continue in her job. It appears she has a handle on her finances and future problems are unlikely to recur. There is sufficient evidence to apply mitigating conditions AG ¶¶ 20(a), 20(b), and 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the 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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 39 years old. She experienced several life events that impacted her finances. She has made sufficient efforts to resolve her financial problems and overcome the trustworthiness concerns raised under Guideline F, financial considerations.

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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Carol G. Ricciardello
Administrative Judge