



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 19-01993
)
Applicant for Public Trust Position)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

January 27, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Applicant defaulted on four bank debts. She provided insufficient evidence in mitigation. Eligibility for a public trust position is denied.

Statement of the Case

On May 29, 2018, Applicant submitted an application for a public trust position (Application). On July 17, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) alleging trustworthiness concerns under Guidelines F.

Applicant responded to the SOR on August 1, 2019, and elected to have the case decided on the written record in lieu of a hearing (Answer). She admitted, with explanation, the four SOR allegations.

On or about September 5, 2019, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM) that referenced seven attached documents identified as Items 1-7. A complete copy of the FORM was provided to

Applicant, who was afforded an opportunity to file objections and to submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations within 30 days of her receipt of the FORM.

Item 5 attached to the FORM is a summary of Applicant's background interview, which was conducted on December 14, 2018, with a follow-up contact by the investigator. Department Counsel advised Applicant in the FORM of her right to object to the admissibility of Item 5 as unauthenticated. Department Counsel also informed Applicant that she could, alternatively, provide corrections and updates to the summary of her interview. Department Counsel also warned Applicant that if she failed to object to Item 5 or if she failed to respond to the FORM, she may be determined to have waived any objections she has to the admissibility of the interview summary and Item 5 may be considered as evidence in her case. (FORM at 3.)

Applicant received the FORM on September 18, 2019. She provided no response. I conclude that she has waived any objections to the admissibility of Item 5. Accordingly, I have included this document in the written record in this case. I have marked Items 1 through 7 attached to the FORM as Government Exhibit 1-7, respectively. Government's Exhibits (GE) 1 through 7 are admitted without objection. The case was assigned to me on November 19, 2019.

Findings of Fact

I have incorporated Applicant's admissions in her response to the allegations set forth in SOR ¶¶ 1.a-1.d in my findings of fact. I have also noted her explanation in mitigation. Applicant's personal information is extracted from GE 4, her Application, unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, the Government's FORM, and the documentary evidence in the record, I make the following findings of fact:

Applicant, 42, is married and has three children, ages 23, 16, and 9. She graduated from high school and has earned some college credits. Her husband served in the U.S. Army and was discharged between 2015 and 2017. The record is unclear with respect to her husband's post-discharge employment history, except that he was unemployed for a period. Applicant and her family relocated to another state to live with her parents in about 2015. Applicant was unemployed for five or six months after the relocation, at which time she obtained a job as a teacher in child-care program. For a period of time in 2017 and 2018, Applicant also worked at a second job. (Answer.)

Applicant experienced financial distress when she and her husband were unemployed and relocated to another state. Also, she reported in her background interview that she experienced deaths in her family; however, she did not provide any further information about what financial impact, if any, arose from these losses. I note that her 2018 Application reflects that both her mother and her father were deceased. (Answer; GE 5 at 2.)

Vehicle Loan Charged-Off in the Amount of \$18,367 (SOR ¶ 1.a) –In March 2015, Applicant opened an account at a credit union (Credit Union) to purchase a vehicle. The loan amount was \$49,368 and the monthly payment was \$690. She defaulted on the loan in May 2018. Her June 2018 credit report reflects that she also borrowed \$31,405 from a different lender in March 2015 to purchase a second vehicle and that this account was closed following a default. In her background interview, Applicant reported that she had a vehicle repossessed. It is not clear from the record which vehicle was repossessed. Her June 12, 2019 credit report in the record reflects that the credit union account has a balance of \$18,367. In her Answer, Applicant claimed, “I’m currently working on resolving all the incurred debts listed [in the SOR.]” She has provided no additional details or documentary evidence to show that she has taken any steps to pay this debt or any of the others alleged in the SOR. (GE 5 at 1; GE 6 at 2; GE 7 at 2.)

Credit-Card Debt Charged-Off by the Credit Union in the Amount of \$9,182 (SOR ¶ 1.b) – Applicant opened this credit-card account in September 2016. She defaulted on the account in about November 2017. In her background interview and in her SOR answer, she provided no additional information. (GE 6 at 6; GE 7 at 2.)

Credit-Card Account Charged-Off in the Amount of \$1,852 (SOR ¶ 1.c) – Applicant defaulted on this credit-card account in about February 2017. The record contains no additional information. (GE 7 at 2.)

Bank-Loan Account in Collection in the Amount of \$988 (SOR ¶1.d) – Applicant defaulted on this account in about November 2016. The record contains no additional information. (GE 6 at 7; GE 7 at 2.)

Applicant reported in her background interview that she has received no financial counseling. She provided no additional information about financial counseling in her SOR answer. (GE 5 at 3.)

Policies

A memorandum from the Under Secretary of Defense, dated November 19, 2004, treats public trust positions as sensitive positions, and it entitles applicants to the procedural protections in the DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) before any final unfavorable determination may be made. This case is adjudicated under the Directive and the adjudicative guidelines (AG), which became effective on June 8, 2017. The ultimate standard is that the person’s loyalty, reliability, and trustworthiness are such that assigning the person to sensitive duties is clearly consistent with the interests of national security.

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

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 decision. The protection of the national security is the paramount consideration. Under AG ¶ 2(b), "[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security."

A person granted 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. Adjudication decisions on applications for a position of public trust 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

Adjudicative Guideline ¶ 18 articulates the trustworthiness concern as follows:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding sensitive information.

Applicant's admissions in her Answer and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts") and 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

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; and

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

Applicant's four debts remain delinquent. They arise out of a period of unemployment experienced by her husband after his discharge from the Army, her unemployment in 2015 after she relocated her family to live with her parents, and one or more deaths in her family. These circumstances are unusual and may not recur. The fact that the debts have not been addressed either before the SOR or after raises concerns about her reliability, trustworthiness, and judgment. AG ¶ 20(a) is only partially established.

Applicant attributes her indebtedness to her husband's unemployment, her unemployment, and other very unfortunate family circumstances, all beyond her control. She has provided, however, no details about the length of the period of her husband's unemployment or how the deaths in her family affected her financial circumstances. Absent more information, it is not possible to make any conclusions regarding the extent to which these difficult circumstances may have caused her to experience financial distress. Similarly, she has provided no information upon which a conclusion is possible that she has acted responsibly under the circumstances. AG ¶ 20(b) is only partially established.

Applicant has not initiated a good-faith effort to resolve her delinquent debts. She has not provided any evidence of payments of her debts or a record of payments under installment agreements. AG ¶ 20(d) is not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some factors warrant additional comments. Applicant had an opportunity to respond to Department Counsel's FORM and the documentary evidence submitted, but she failed to do so. As a result there is insufficient mitigating evidence in the record to explain the extent of her husband's unemployment and its impact of her ability to continue to pay her debts. She relocated her family to live with her parents, which likely reduced her living expenses. She was also unemployed for a period following her relocation. There is insufficient evidence in the record to explain how these situations impacted her ability to pay her debts. The same applies with respect to her statement that she experienced deaths in her family. She did not explain further whether it was her parents who passed away. If it was her parents who died during the relevant time period, Applicant failed to explain what impact that unfortunate situation may have had on her ability to pay her debts. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating the very limited evidence in the record in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for a position of public trust. Eligibility for a position of public trust is denied.

John Bayard Glendon
Administrative Judge