



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



In the matter of:)
)
) ADP Case No. 19-03164
)
Applicant for Public Trust Position)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 3, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline F (financial considerations). Applicant responded to the SOR on March 31, 2020, and requested a decision on the written record in lieu of a hearing. On April 22, 2020, Department Counsel requested a hearing before an administrative judge.

The case was assigned to me on March 31, 2021. The hearing was convened as scheduled on May 14, 2021. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. She has worked for her current employer since 2007. She has an associate's degree that she earned in 2016. She is married with three children. (Transcript (Tr.) at 23-24; GE 1)

Applicant's husband had a heart attack in 2015. He was in the hospital for several months and out of work for months after his release. Applicant became overwhelmed, and some things, including her taxes, were not addressed. (Tr. at 17-18; GE 2)

Applicant and her husband filed their 2015 federal and state income tax returns on time, but they did not pay all of the federal taxes that were due. IRS records indicate their tax liability was \$3,709; \$2,322 was withheld from their pay; and they had a credit of \$520; leaving a balance of about \$867. (Tr. at 18-20; Applicant's response to SOR; GE 3, 4; AE A-B)

Applicant and her husband did not file their 2016 federal and state income tax returns when they were due, and they did not pay all of the federal taxes that were due. Applicant and her husband filed their 2016 federal and state tax returns in about October 2019. They established a \$250 per month installment agreement with the IRS in January 2020, with the first payment made in March 2020 by automatic debit from their account. The installment plan covered taxes owed for 2015, 2016, and an additional tax year or years. Applicant established that she made every \$250 payment as required (\$3,250 through April 15, 2021). She no longer owes for 2015. In May 2021, with penalties and interest, the balance owed the IRS for 2016 was \$4,708. She estimated her total federal tax liability to be about \$12,000. (Tr. at 18-23; Applicant's response to SOR; GE 1-4; AE A-D)

Applicant accepted responsibility for her tax failures. All tax returns except for 2016 have been filed on time. She is current on her state taxes. She credibly stated that all future tax returns will be filed on time, and she will continue with her IRS installment plan until all of her back taxes are paid. (Tr. at 18-23)

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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.

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 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following is potentially applicable in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant did not file her 2016 federal and state income tax returns when they were due. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following 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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's failure to file her tax returns when required raises questions about her judgment and willingness to abide by rules and regulations. Nonetheless, I am satisfied that Applicant has learned a valuable lesson, and that all future returns will be filed on time. She filed her 2016 federal and state income tax returns; all other returns have been filed on time; her state taxes are paid; and she has been in an installment plan with the IRS for more than a year. AG ¶¶ 20(a) and 20(g) are applicable.

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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant mitigated the financial considerations trustworthiness concerns.

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.b:	For Applicant

Conclusion

It is clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

Edward W. Loughran
Administrative Judge