



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ADP Case No. 19-02940
)
Applicant for Public Trust Position)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2021

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On January 31, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on March 13 and March 16, 2020, and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 24, 2021, and the hearing was convened as

scheduled on July 7, 2021, using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified and offered exhibit (AE) A. The record was kept open until July 23, 2021, to allow Applicant to submit additional evidence. She submitted AE B, which is admitted without objections. DOHA received the hearing transcript (Tr.) on July 16, 2021.

Findings of Fact

Applicant denied the SOR allegations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 48-year-old employee of a government contractor. She began working for her employer as an intake representative in March 2018. She experienced periods of unemployment from: February to March 2018; December 2013 to July 2014; September 2012 to July 2013; and June 2011 to January 2012. She holds an associate's degree. She married in 2007, separated from her husband in 2010, and divorced in 2016. She has three adult children. Her ex-husband failed to pay child support for these children when they were minors. She recently remarried in December 2020. (Tr. 7, 18, 22-23; GE 1, 2)

The SOR alleged that Applicant had five student loans in collection status totaling \$21,348. It also alleged two collection debts from an apartment lease obligation totaling \$3,659, and a consumer collection debt for \$530. The debts were listed by Applicant in her security clearance application (SCA) dated March 21, 2018; discussed by her with an investigator during her background interview in May 2019; and listed on a credit report from April 2018. (GE 1, 2, 3)

Applicant incurred her student loan debt while attending technical school to receive her associate's degree from 2011-2012. (SOR 1.a-1.e) The loans were in a forbearance status from approximately January 2013 until 2016. Applicant forgot to renew her forbearance agreement and the loans became delinquent in approximately 2017. The loans were assigned to a collection agency. She was told by the collector that she qualified for a loan rehabilitation program. She made payments to the collector before September 2019, but she does not have supporting documentation for those payments. She documented that she paid the required monthly payments from September 2019 to March 2020, when the loans were put in forbearance status due to COVID-19. The loans remain in forbearance. When she was making payments, they were coming directly out of her bank account. She has sufficient funds to begin making similar payments once the current forbearance period ends and she intends to do so. These debts are being resolved. (Tr. 21, 26-29; AE B; SOR Answer)

After Applicant separated from her husband in 2010, she moved herself and her children into an apartment complex in approximately 2012 and signed a lease. She lived there several months with her daughter and granddaughter. While living there, two drive-by shootings occurred at the complex. For safety reasons, Applicant decided to

give 30-days' notice of termination of the lease to the apartment manager and move out. She was given eviction papers the day she was moving out of the complex. She never received any other documentation concerning the lease or eviction. She learned of these debts by reviewing her credit report. (SOR 1.f and 1.g, relate to the same underlying debt) She contacted the current apartment manager to work out a payment arrangement, but was told that there was no record of her or the debt. Additionally, the debt no longer appears on her credit report. This debt is resolved. (Tr. 19-20; GE 4-5; SOR answer)

Applicant credibly testified that the delinquent consumer debt was incurred and eventually paid by her ex-husband. She attempted to contact him so he could provide a statement to that effect, but she was unable to do so. This debt is no longer showing on her credit report. This debt is resolved. (Tr. 31; GE 2, 5)

Applicant indicated that her current financial status is much improved. She and her second husband recently purchased a home. She stated that after paying all monthly expenses, they have a remainder of approximately \$1,000. They use this to make extra mortgage payments or to add to their savings. Her most current credit report shows no delinquencies. Additionally, she provided a character statement from her current supervisor who described Applicant as one of her most dependable team members. (Tr. 32-33; GE 5; AE A)

Policies

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.

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the trustworthiness concern for financial considerations:

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.

The guideline notes several conditions that could raise trustworthiness concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations;

Applicant became delinquent on her student loans and two other consumer debts. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; and

(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's incurred student loans from 2011-2012. They became delinquent when her forbearance period ended. At some point, a collection agency acquired her student loans. Applicant acted responsibly by reaching an agreement to rehabilitate her student loans. She started making her required monthly payments in September 2019 and continued through March 2020 when her loans were put in forbearance due to COVID-19. She is current on her student loans and intends to make her required payments once this forbearance period ends. Concerning the lease debt, Applicant again acted responsibly by contacting the creditor of the apartment complex and was told there was no record of her debt. The debt no longer appears on her credit report. Her ex-husband resolved the remaining debt. Applicant lives within her means, recently purchased a home, and is now current on all her other financial obligations. All the above mitigating conditions have some applicability.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness determination by considering the totality of the applicant's conduct and all the 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 trustworthiness determination must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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(d) were addressed under that guideline, but some warrant additional comment. I considered Applicant's contractor service, her periods of unemployment, her divorce and lack of child support from her ex-husband, and the circumstances surrounding her indebtedness.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security 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.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is granted.

Robert E. Coacher
Administrative Judge