



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



In the matter of:)
)
) ADP Case No. 20-01945
)
)
Applicant for Public Trust Position)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

November 3, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASDC3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, Personnel Security Program (Regulation), dated January 1987. (Superseded by DoD Manual 5200.02.)

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on January 21, 2020. (Government Exhibit 1.) On October 30, 2020, the Department of Defense (DoD), issued an SOR detailing the trustworthiness concerns under Guideline F Financial Considerations regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

Applicant answered the SOR on a date uncertain, and requested a hearing before an administrative judge. The case was assigned to me on March 4, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on July 21, 2021, and the hearing was convened as scheduled on August 24, 2021. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on her own behalf. The record remained open until close of business on August 31, 2021, to allow Applicant the opportunity to submit supporting documentation. Applicant submitted four documents that were collectively marked as Applicant's Post-Hearing Exhibit A, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 1, 2021. Based upon a review of the pleadings and exhibits, eligibility for a public trust position is denied.

Findings of Fact

Applicant is 31 years old. She is divorced, and is a single parent with a seven-year old son. Applicant has a high school diploma and military training. She holds the position of Clinical Functions Advisor, and is seeking access to sensitive information in connection with her employment.

Guideline F - Financial Considerations

The Government opposes Applicant's request for access to sensitive information on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR.

The Government alleges that Applicant is not eligible for a public trust position because she is financially overextended and at risk of having to engage in illegal acts to generate funds. The SOR identified ten delinquent debts totaling in excess of \$30,000. Applicant admitted each of the allegations, except for three debts that are not listed on her most recent credit report, allegations 1.b., 1.c., and 1.g., set forth in the SOR. Credit reports of the Applicant dated February 1, 2020; and February 2, 2021, reflect that the debts are still owing. (Government Exhibits 3 and 4.)

Applicant joined the U.S. Army right after graduating from high school in 2008. In the Army, she worked as a Unit Supply Specialist, and held a security clearance without incident. She separated and received an honorable discharge in April 2013. In May 2013, she joined the Army reserves and to finish her contract she served in that capacity until February 2017. She served a total of nine years in the military, and her highest pay grade achieved was an E-4.

After separating from the Army in 2017, Applicant has had several jobs before her current one, and has never really earned enough money to live on without difficulties. She does not spend irresponsibly or extravagantly. She seems to be fairly frugal with her money, but finds that being a single parent is expensive. She stated that at times she has had to choose between paying a bill or feeding her son. Being responsible for paying all of her living expenses, including rent, utilities, food, her car payment, gas, and insurance, as well as providing for her son's needs by herself, has not been easy. Applicant also added that she is living in a state with a high cost of living, and many jobs do not compensate their workers accordingly. She explained that she was previously on childcare assistance and when she got an increase in pay, she was told that she made too much money and had to repay \$1,100. At that time, she did not qualify for food stamps or medicaid because of her pay raises. With the pay raises, she still did not have enough money to pay all of her bills and provide for the things her son needed. She states that she does not receive much in child support, and her son's father is not a figure in his life. To subsidize her income, Applicant works as a housekeeper for a friend. Applicant has been focusing on bringing her car payment current, and paying her rent. (Tr. pp. 21-28.)

Applicant began working for her employer in her current position in July 2017. With this job, she had planned on resolving her delinquent debt. Since Covid, however, in addition to her young son, her siblings have moved in with her, as they no longer have jobs, and are dependent on her. Applicant now pays the rent, utilities, her car payment, food, and other bills so that they all have a roof over their heads. Applicant states that she does not gamble, drink, or use illicit drugs. She further states that she is of sound mind and very responsible. She will never under any circumstances be tempted to commit any crime. She states that she is simply trying to be the best mother that she can be. Applicant also alluded to a health problem that she is either currently suffering from or has been dealing with in some respect. She did not go into detail. (Tr. p. 25 and 35.)

The following debts set forth in the SOR became delinquent and owing:

1.a. Applicant is indebted to a bank for a vehicle she purchased. The loan account was past due in the amount of \$302, with an outstanding balance of \$9,465. Applicant testified that it was behind at that time, but she has since brought the loan current. (Tr. p. 24.) There is no documentary evidence in the record to show that she has brought this debt current. Applicant states that the bank is sending her something to update the status of the debt, but she has yet to receive it. (Applicant's Post-Hearing Exhibit A.) The debt remains owing.

1.b. Applicant is indebted to a creditor for an account that was charged off in the approximate amount of \$2,436. She plans to contact the creditor next month to start working to resolve the debt. (Tr. p. 26.) The debt remains owing.

1.c. Applicant is indebted to a creditor for a motor cycle she purchased. The account was charged off in the approximate amount of \$1,161. Applicant has not spoken to the

creditor about this debt for about two years. There has been a lot going on in her life. (Tr. p. 27.) The debt remains owing.

1.d. Applicant is indebted to a creditor for a credit card account that was charged off in the approximate amount of \$598. Applicant has not spoken to the creditor for several years. (Tr. p. 28.) The debt remains owing.

1.e. Applicant is indebted to a creditor for a cell phone service account that was placed for collection in the approximate amount of \$3,910. Applicant has not spoken to the creditor for several years. (Tr. p. 29.) The debt remains owing.

1.f. Applicant is indebted to a bank for a personal loan she obtained to purchase tires for her car and make necessary car repairs. The account was placed for collection in the approximate amount of \$2,779. Applicant stated that she planned to start paying this off after she got her car payment caught up. (Tr. p. 30.) She recently contacted the bank to obtain information about her options. She has yet to receive this documentation. (Applicant's Post-Hearing Exhibit A.) The debt remains owing.

1.g. Applicant is indebted to a creditor for cell phone service she had while on active duty. Applicant also had a few of her family members on this account. The account was placed for collection in the approximate amount of \$3,019. (Tr. pp. 30-31.) The debt remains owing.

1.h. Applicant is indebted to a creditor for a credit card account that was placed for collection in the approximate amount of \$625. Applicant closed the credit card and owed about \$300 or \$400, which was the credit limit. She did not realize that it was still acquiring interest on the card even after she closed the card. She spoke to the creditor earlier this year, and they were sending her a payment arrangement or settlement package to complete. She did not receive the package and has not followed up. (Tr. p. 32.) The debt remains owing.

1.i. Applicant is indebted to a military credit card for an account that was placed for collection in the approximate amount of \$692. Applicant explained that she was not able to pay the debt because she did not have access to the base after she separated from the military. The account was closed. She contacted customer service about this and they told her to go to the military store to make a payment because she was unable to make a payment over the phone. She sent an e-mail about this to customer service but she has not heard back. (Tr. p. 33.) The debt remains owing.

1.j. Applicant is indebted to a University for an account that was placed for collection in the approximate amount of \$5,484. Applicant applied for college and did not make sure the school applied her GI Bill benefits. Applicant spoke to the representatives from the University and was able to set up a payment plan that will start September 16, 2021. (Applicant's Post-Hearing Exhibit A.) The debt remains owing.

Applicant has now put a monthly budget together that she plans to follow. (Applicant's Post-Hearing Exhibit A.) She has decided that she is now moving in with

her sister and her family because she can no longer afford to pay the \$1,400 a month for her place. Her sister will not charge her rent so that she is able to catch up with her bills. (Tr. p. 35 - 40.)

A letter of recommendation from a Coding Compliance Specialist, dated August 25, 2021, who works with the Applicant, states that she has found Applicant to be extremely helpful and knowledgeable in her area of expertise. Applicant is said to consistently provide valuable instruction and insight to others. In the writer's opinion, Applicant is very hardworking and has shown aptitude in critical thinking and the ability to analyze a situation and properly resolve the issue. The writer considers the Applicant to be one of the best sustainment trainers they have on the job. (Applicant's Post-Hearing Exhibit A.)

An email letter of appreciation from a contractor, generated on January 8, 2021, expresses how valuable Applicant has been to their mission. Applicant has excellent customer service skills and she is considered an absolute standout among the others. She is said to be logical and smart in her approach to problem solving, and she has been able to identify solutions quickly and confidently. Others depend on her to solve their problems and she does so when others are unable to. Applicant is considered to be a real asset to the team. (Applicant's Post-Hearing Exhibit A.)

An email letter of appreciation from a contractor dated July 7, 2021, indicates that Applicant was asked to train someone with a disability, and her approach was very patient, thorough and kind. She displayed excellent customer service skills. She went above and beyond in providing her training service and is greatly appreciated for her service. (Applicant's Post-Hearing Exhibit A.)

Applicant stated that she recently contacted the Veteran's Administration and made an appointment with a social worker to help her find a financial advisor to assist in getting her delinquent debts resolved. Because Applicant was recently exposed to Covid, her supervisor told her to quarantine and get tested. This caused her to miss her appointment with the social worker, but Applicant plans to reschedule her meeting soon. (Applicant's Post-Hearing Exhibit A.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to sensitive information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and

commonsense decision. 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 the 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 as to potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The trustworthiness concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial distress. She is excessively indebted to a number of creditors totaling approximately \$30,000. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;
- (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, or 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.

It is acknowledged that Applicant has had a tough time with living in a high-cost of living area, limited income, and the expenses of raising a son on her own. She also incurred more expense when her siblings, who are now unemployed, moved in with her. These circumstances were admittedly beyond her control and have obviously caused additional financial strain, hindering her ability to pay her delinquent debt. However, since July 2017, Applicant has been working full time for her current employer. She has been an outstanding employee on the job but has done little in the way of showing that she can resolve her delinquent debts. In fact, she has not shown that she has even set up payment plans with the creditors, nor has she shown any real effort to contact her creditors to resolve her debt.

Knowing that the Government was concerned about her excessive financial indebtedness, she has not demonstrated a good-faith effort to take control of her financial affairs. All of the delinquent debt set forth in the SOR remains owing. Applicant has not demonstrated sufficient responsibility toward her delinquent debt. In this case, none of the mitigating conditions are applicable. The record fails to establish sufficient mitigation of financial trustworthiness concerns under the provisions of AG ¶¶ 20(a) through 20(g).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a position of trust must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has failed to demonstrate that she can live within her means, budget her income accordingly, and pay her bills in a timely fashion. At this point, her financial problems continue as there is no evidence that they have been resolved.

Overall, the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a public trust position. She has not met her burden to mitigate the trustworthiness concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue national security eligibility for a public trust position for the Applicant.

Darlene Lokey Anderson
Administrative Judge