



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
+++++) ADP Case No. 20-00231
)
Applicant for Public Trust Position)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*
01/25/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. Applicant did not present sufficient evidence to explain, extenuate, or mitigate the trustworthiness concern stemming from her problematic financial history. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format) on July 3, 2019. On November 2, 2020, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR), detailing trustworthiness concerns under Guideline F for financial considerations. This action was taken under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). In addition, Security Executive Agent Directive (SEAD) 4, *National Security Adjudication Guidelines* (AG), effective within the Defense Department on June 8, 2017, apply here. The SOR detailed the factual reasons for the action under the guideline known as Guideline F for financial considerations. Applicant answered the SOR on November 23, 2020, and requested a decision based on the written record without a hearing.

On May 19, 2021, Department Counsel submitted a file of relevant and material information (FORM), which included seven items of evidence (Items). The FORM was sent to Applicant on June 2 and 25, 2021, and Applicant received the FORM on July 2, 2021. Applicant responded to the FORM on August 3, 2021, enclosing a two-page letter of the same date (Applicant's Response). Items 1 and 2 (SOR and Answer) are the pleadings in this case. Items 3 through 7 and the Response are admitted into evidence without objection. The case was assigned to me on September 10, 2021.

Findings of Fact

Applicant is 61 years old and has a Juris Doctor degree and a Master of Science in Foreign Service degree. She is married and has one adult son. Since February 2013, she has worked for a defense contractor. Applicant is seeking to obtain eligibility to occupy a position of public trust, because her sponsor provides educational services to the Department of Defense. Eligibility is necessary, because a job with her sponsor would involve access to sensitive but unclassified information. (Item 3.)

Under Guideline F, the SOR alleged 10 delinquent debts totaling \$91,969. (Item 1.) Applicant denied those debts. In her defense, Applicant cited the 2008-2009 recession, illnesses, hospitalizations, and deaths of family members. Those events coalesced to contribute to the financial straits reflected in the SOR. Applicant also claimed that during the recession and her family hardships, her creditors charged usurious interest rates and penalties. She answered that any amounts that are due her creditors are barred or extinguished by the statute of limitations. (Item 2 and Applicant's Response.) Applicant has no intention of contacting her creditors, because by doing so she might lose the bar of the statute of limitations. (Item 4.) Many of the SOR debts persist to this day. (Items 6 and 7.) Applicant provided no documents in response to the SOR or the FORM.

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(c), 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 access to [sensitive] information will be resolved in favor of national security."

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.

Discussion

Guideline F – Financial

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. AG ¶¶ 18, 19, and 20 (setting forth the concern and the disqualifying and mitigating conditions).

The overall concern is:

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. AG ¶ 18.

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

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c) a history of not meeting financial obligations;

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.

The evidence supports a conclusion that Applicant has had problematic financial conditions sufficient to raise a trustworthiness concern under Guideline F. She appears to be unable or unwilling to satisfy her debts, and she has a history of not meeting her financial obligations. Therefore, AG ¶¶ 19(a), (b), and (c) apply. The next inquiry is whether any of the mitigating conditions apply.

The debts that raised trustworthiness concerns were delinquent when the SOR was issued in November 2020 and remained in arrears when the FORM was filed in May 2021. Therefore, AG ¶ 20(a) does not apply.

In her Answer, Applicant pleaded that her delinquent debts were caused by the 2008-2009 recession, illnesses, hospitalizations, and deaths of family members. She did not provide any explanation describing how any one or more of those eventualities caused her financial delinquencies. Nevertheless, I have assumed that those conditions caused Applicant's indebtedness and were conditions largely beyond her control. That, however, does not end the inquiry under AG ¶ 20(b). Applicant must also show that she acted responsibly under the adverse circumstances she confronted. Here, Applicant took no actions save to await the running of the applicable statutes limitations. The Board has long held that reliance on a state's statute of limitations is not a good-faith effort to resolve financial difficulties. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008). Therefore, AG ¶ 20(b) does not apply.

Conclusion

The record creates doubt about Applicant's trustworthiness, good judgment, and ability to protect sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the "whole-person" concept. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors).

Accordingly, I conclude that Applicant did not meet her ultimate burden of persuasion to show that it is clearly consistent with the interests of national security to grant her eligibility for access to sensitive information.

Formal Findings

The formal findings on the SOR allegations are:

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

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information.

Philip J. Katauskas
Administrative Judge