



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



In the matter of:)
)
) ADP Case No. 21-02869
)
)
Applicant for Public Trust Position)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*
08/12/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a public trust position. Applicant did not present evidence sufficient 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 September 3, 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) on January 25, 2022, 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. Applicant answered the SOR (Answer) on February 20, 2022, and requested a decision based on the written record without a hearing.

The Government submitted a file of relevant and material information (FORM) on April 12, 2022, which included five items of evidence (Items). Applicant received the FORM on April 25, 2022. Applicant did not respond to the FORM. Items 1 and 2 (SOR and Answer) are the pleadings in this case. Items 3 through 5 are admitted into evidence without objection. The case was assigned to me on July 29, 2022.

Findings of Fact

Applicant is 41 years old. She was divorced in August 2018 and has one minor child. She graduated from high school in June 1998. Applicant seeks eligibility to occupy a position of public trust, because her employer and sponsor provides services to the Department of Defense, and her job would involve access to sensitive but unclassified information. Applicant has been employed by her sponsor since July 2020. (Item 2) This is her first request for a position of public trust. (Item 1)

Under Guideline F, SOR 1.a alleged failure to file Federal income tax returns for tax years 2015 through 2020 as required; SOR 1.b, failure to file state income tax returns for tax years 2015 through 2020 as required; and 13 delinquent debts totaling approximately \$16,760. (SOR 1.c through 1.o) Applicant admitted these allegations. She also disclosed on her SF 86 that she had filed for bankruptcy in the past. (Item 2)

Applicant stated that her ex-husband had someone file tax returns but the preparer “had them all messed up” and she was fearful of filing. She stated that she is working with a tax person to help her. As to the other delinquent debts, Applicant thought some had been paid through a garnishment of her wages, but she had no specific information. (Item 2) She admitted that she has lost track of all the accounts in her name. (Item 3)

Applicant attributed her financial issues to a divorce which left her with all the debt and bills that were only in her name. (Item 3) Some of the debts are old and she does not know the account numbers to find the new creditors. She realizes that she has a bad credit history but she believes she did her best. (Item 2)

In the 2020 subject interview, Applicant explained that her ex-husband owes \$10,000 in child support and she is not able to address the past delinquent debts. Applicant has a special needs child and has many medical bills. She stated that she is embarrassed by the debts. However, as to the delinquent debt in SOR 1.l for \$9,406, her ex-husband has the vehicle but he is not making payments. She acknowledged that the debt is on her credit report. (Item 3) Applicant also told the investigator that her ex-husband used money from their checking account for his own needs and did not leave sufficient money in the checking account for Applicant to pay bills. (Item 3)

Applicant lives with her mother and uses her mother’s car so that she can survive. Her plan is to obtain a financial advisor or lawyer to address the tax filings and the delinquent debts. At this time, she does not have the money to pay for professional help, but she is current on her living expenses. She hopes that she could proceed with that

plan in about six months. She does not want to file for bankruptcy again. She intends to pay everything that she owes. She does not dispute any of the credit reports. (Items 4,5)

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 Considerations

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 stated 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.

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:

Potentially Disqualifying Factors

AG ¶ 19(a) inability to satisfy debts;

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

AG ¶ 19 (f) failure to file or fraudulently file annual Federal, state, or local
..... income tax returns

Potentially Mitigating Factors

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(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.

The evidence supports a conclusion that Applicant has had problematic financial conditions that raise a trustworthiness concern under Guideline F. She appears to have been unable to satisfy her debts, and she has a history of not meeting her financial obligations. She has not filed her income tax returns for a number of years. Therefore, AG ¶¶ 19(a), (c) and (f) 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 January 2022 and remained in arrears when the FORM was filed. Those debts were neither infrequent, nor did they occur long ago. The Federal and state income tax returns have not been filed. Therefore, AG ¶ 20(a) does not apply.

Applicant enumerated a host of reasons that caused her dire financial straits. Her divorce and child support issues are “conditions . . . largely beyond” Applicant’s control. AG 20 (a)The inquiry under AG ¶ 20(b), however, does not end there. Applicant must also offer proof of how she responded responsibly to the adverse circumstances she confronted about her debts and non-filing of Federal and state tax returns. She has not provided documentation in response to the SOR to support mitigation. Her pattern of financial irresponsibility precludes a finding that she has good judgment or reliability. Accordingly, AG ¶ 20(b) does not apply. Applicant has a plan to work with a tax person, but she has not yet made any arrangement with the appropriate tax authority to file the Federal or state tax returns yet. AG ¶19(g) 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 has not met her ultimate burden of persuasion to show that it is clearly consistent with the interest 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.o:	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 to hold a public trust position.

Noreen A. Lynch
Administrative Judge

