



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



In the matter of:)	
)	
)	ADP Case No. 22-01732
)	
Applicant for Public Trust Position)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations trustworthiness concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On November 7, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. DOD acted under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on December 8, 2022, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material on February 28, 2023. The evidence included in the FORM is identified as Items 3-6 (Items 1 and 2 include pleadings and transmittal information). The FORM was received by Applicant on March 6, 2023. She was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted documents, which I marked as Applicant

Exhibit (AE) A1-A21 and admitted without objection. Items 3-6 are admitted into evidence without objections. The case was assigned to me on June 1, 2023.

Findings of Fact

Applicant admitted all the SOR allegations, with some explanations. (SOR ¶¶ 1.a-1.t). Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 47-year-old employee of a federal contractor. She has worked for this employer since September 2020. She is an accounting technician. She has been continuously employed since 2006. She is a high school graduate. She married in 1995 and was divorced in 2009. She has no children. (Items 2-3)

The SOR alleged Applicant owed 20 delinquent debts totaling approximately \$26,500. The debts were comprised of consumer debts, mostly delinquent credit cards. The allegations are supported by credit reports from March 2022 and March 2023, her answers to questions from a background investigator in April 2022, and admissions in her SOR answer. (Items 2-6)

Applicant explained that she got into financial difficulties in 2004, when she separated from her then husband and met a person who would become her girlfriend until approximately 2019 when the relationship ended. Applicant described her former girlfriend as mentally abusive. In order to keep the girlfriend happy, Applicant applied for and received 20 credit cards, in her name, to pay for a lifestyle the girlfriend demanded, but which Applicant could not afford. She also financed the girlfriend's expensive hobby of restoring cars. Applicant was the primary wage earner and paid all the bills in the relationship. Her girlfriend worked as a parttime dog groomer. Applicant claims not to have applied for or used any credit cards since 2017. (Item 6)

Applicant admitted all the debts in her SOR answer. She also provided the following explanations about her SOR debts: "This has been taken care of and no longer on credit report," or "Working on this now." She provided documentation that she paid one payment of approximately \$57 toward SOR ¶ 1.t in March 2023. She claimed that she has two payments left to make on this account. She failed to provide documentation showing that the remaining SOR debts were paid directly or through a payment plan. All the SOR debts were listed on her March 2022 credit report, but some of these debts were not listed on her March 2023 credit report. They may have aged off by this time, but there is no evidence that Applicant paid them. (Items 2, 4-5; AE A1-3)

Applicant documented that she is current and making regular payments on a credit card that does not appear to be an SOR debt. On this account she made two \$10 payments in January 2023, on a balance of \$428. She also made two \$20 payments in February 2023, on a balance of \$419. She claims that she is currently financially stable and meeting all her monthly expenses. She did not provide any documentation to show her current financial position, such as a budget, earned wages, or bank account information. There is no evidence of financial counseling. (Item 2, 6; AE A1, A6-A21)

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 trustworthiness 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 incurred 20 delinquent debts that remain unpaid. I find both of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. I have considered all 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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (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.

None of the above mitigating conditions fully apply. Applicant admitted that her financial problems were created because she attempted to please her then girlfriend. This is not really a condition beyond her control, but rather a conscious choice she made. Regardless, she failed to present evidence that she acted responsibly in addressing her delinquent debts. She presented no evidence of taking any action to contact creditors, set up payment plans, or pay the debts, other than her recent partial payment of one SOR debt (SOR ¶ 1.t). She did not present evidence to support a dispute of any of the debts. There is no evidence of financial counseling. She failed to establish a track record of financial responsibility.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to sensitive information 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 access to sensitive information must be an overall commonsense assessment based upon careful consideration of the guidelines 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 relationship with a former girlfriend that caused her financial distress and her recent credit card payments. However, Applicant failed to produce evidence of any significant action taken to address her delinquent debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for access to sensitive information. For all these reasons, I conclude Applicant has not 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: AGAINST APPLICANT

Subparagraphs 1.a – 1.t: Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

Robert E. Coacher
Administrative Judge