



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



In the matter of:)	
)	
)	ADP Case No. 22-02471
)	
Applicant for Public Trust Position)	

Appearances

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

09/20/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On December 22, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on December 28, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 3, 2023. The hearing was originally scheduled for August 3, 2023, but it was rescheduled at my request to August 21, 2023. The hearing convened as rescheduled.

Evidentiary and Procedural Rulings

SOR Amendment

The SOR was amended with the consent of the parties to reflect this case as a public trust position case (ADP) vice a security clearance case (ISCR). See Transcript (Tr.) at 6-9 and email from Applicant’s facility security officer. (Hearing Exhibit (HE) I)

Evidence

Government Exhibits (GE) 1 and 3 through 5 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified, but she did not submit any documentary evidence.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. A previous employer sponsored her for a security clearance. A security clearance is unnecessary for her current job, but her employer is sponsoring her for a public trust position. She is a high school graduate. She married in 2008 and divorced in 2018. She has two children. Applicant has legal custody of her older child and joint custody of her younger child, but the children primarily live with her ex-husband. She has lived with her fiancé for more than six years. (Tr. at 6-9, 17-21, 35-36; GE 1)

The SOR alleges 15 delinquent debts totaling about \$44,000. Applicant admitted owing all the debts. The debts are also listed on one or more credit reports from May 2020, July 2022, or January 2023. (GE 3-5)

Applicant is required to pay \$224 per month in child support for her younger child. Credit reports show balances of \$4,427 in May 2020; \$11,026 in July 2022; and \$12,331 in January 2023 (SOR ¶ 1.j). Her pay is garnished by the court for the child support. The January 2023 credit report shows a payment of \$313, which means a portion is going to the arrearages. (Tr. at 19-22; Applicant's response to SOR; GE 3-5)

SOR ¶ 1.b alleges a \$3,057 delinquent debt. Applicant stated the debt was the financing for a new sofa that she bought or rented. Not too long after the sofa was delivered, she discovered bedbugs in the sofa. The furniture store refused to accept the sofa as a return. She did not feel like she should have to pay for a sofa that had bedbugs. (Tr. at 25-26; GE 3-5)

Applicant admitted that she was financially irresponsible when she was younger, and she "made some dumb decisions." Other than her child support, she has not paid any of the SOR debts. She is hoping to devise a plan to pay her debts. Her only current plan is to wait for them to fall off her credit report. She has not received credit counseling. (Tr. at 16, 24-25, 27-36; GE 3-5)

Policies

This case is adjudicated under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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.

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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for financial considerations is set out 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. 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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

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

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations trustworthiness concerns are provided under AG ¶ 20. The following are potentially applicable:

(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.

I am giving Applicant the benefit of the doubt about the debt for the sofa. If a sofa is delivered with bedbugs, one should not have to pay for it. Her child support arrearages are being paid by garnishment. See ISCR Case No. 20-03457 (App. Bd. Jun. 15, 2023). SOR ¶¶ 1.b and 1.j are mitigated.

Applicant admitted that she was financially irresponsible when she was younger, and she "made some dumb decisions." She has not received credit counseling. Other than her child support, she has not paid any of the SOR debts. She is hoping to devise a plan to pay her debts. Her only current plan is to wait for them to fall off her credit report. Intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her

current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a public trust position. I conclude Applicant did not mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.o:	Against Applicant

Conclusion

It is not clearly consistent with national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Edward W. Loughran
Administrative Judge