



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



In the matter of:)	
)	
)	ADP Case No. 22-01507
)	
Applicant for Public Trust Position)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

11/09/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline F, financial considerations. Eligibility for access to sensitive information is denied.

Statement of the Case

On September 28, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on October 20, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 27, 2023, scheduling the hearing for October 18, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 5, and they were admitted

into evidence without objection. Applicant and one witness testified. She did not offer any exhibits. DOHA received the hearing transcript (Tr.) on October 31, 2023.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and 1.d through 1.j. She denied SOR ¶ 1.c. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. She earned an associate degree in 2015. She married in 2015 and has two children from the marriage, ages two and five. She has two other children from previous relationships, ages 14 and 22. The elder child is financially independent. She also has an adopted daughter who was her mother's foster child. When her mother passed away the daughter was adopted. She said they have more of a sister relationship. She is 25 years old and independent. She also has a stepson who lives with his mother. She does not receive court-ordered child support for her 14-year-old but the father gives the child money. Her husband does the same for his child. (Tr. 14-18, 47)

Applicant operated a home daycare from 2009 until she closed it in November 2018. She then had temporary jobs until she obtained full-time employment in March 2019. She worked for a foster care agency for about two years. She helped place foster children in homes, but when the pandemic hit, the services were reduced and she was laid off in July 2021. She started her current job with a federal contractor in October 2021. Applicant's husband has been employed since 2016. (Tr. 18-20, 35-37)

Applicant attributes her financial problems to unemployment and to family issues. Her mother-in-law had cancer, and she and her husband helped her with medical bills. Her mother-in-law did not have insurance. They overextended themselves to help her maintain her obligations because she was unable to work. She passed away in January 2020. They also had two other family members pass away and they felt an obligation to help. (Tr. 23-24)

Applicant testified that she had been making consistent payments on the debt in SOR ¶ 1.a (\$25,956) before she closed her daycare business in 2018. After the debt went in collection status, she contacted the creditor to make a payment arrangement in about June 2019 after she got a temporary job. She made payments for about six to eight months but then was unable because of family obligations. She contacted the creditor a week before her hearing and is attempting to find the collection company that owns the debt. She anticipated contacting them and working on a payment arrangement. She has received settlement offers from other creditors and hopes to make payment arrangements but is unable to at this time because she does not have the money. (Tr. 20-30)

Applicant current annual salary is approximately \$36,000 to \$38,000. At her prior employment she earned about \$31,000 and was an hourly employee. During the pandemic for approximately six to eight months, her income was reduced. Her husband

earns approximately \$20,000. She drives for Uber when she can, but with two small children it is difficult. Her husband works the night shift so they can reduce childcare expenses and one of them can be home. They have no savings, but she does have a 401k retirement account with about \$2,000 in it. She enrolled in a debt consolidation program in about 2022 but decided the fees, in addition to the monthly payments, were too expensive. She has contemplated filing for bankruptcy but cannot afford the attorney's fees and intends to research if there is a way to do so with reduced legal fees. Applicant has delayed addressing her delinquent bills because she does not want to contact a creditor when she does not have the money to make a settlement offer or payment plan. (Tr. 25, 33-47)

In Applicant's September 2021 Electronic Questionnaire for Investigations Processing, she disclosed she had one debt that became delinquent in 2016 that she was unable to pay because she was unemployed. In her response to government interrogatories, she provided proof that she paid a delinquent debt in April 2022. This debt was not alleged in the SOR. She also said that she was paying the debt in SOR ¶ 1.h (\$733) but she did not provide proof that she made payments or resolved the debt. (Tr. 30-32; GE 1, 2)

Any derogatory information that was not alleged in the SOR will be not considered for disqualifying purposes. It may be considered in the application of mitigating conditions, in making a credibility determination and in a whole-person analysis.

The SOR alleged ten delinquent debts totaling approximately \$46,746. None have been paid or resolved. The delinquencies began about 2015, but most of the debts became delinquent around 2017, 2018 and 2019. In her SOR answer, she denied the debt in ¶ 1.c. She testified that she is responsible for this debt. She confused it with another account that was paid. Some creditors have offered settlement agreements, but she is unable to accept them at this time. (Tr. 48-60)

The debts alleged in the SOR are corroborated by Applicant's admissions, testimony, responses to interrogatories, and credit reports from October 2021, May 2022, and January 2023. (GE 1-5)

Applicant has approximately \$56,000 in student loans that are in a deferred status due to financial hardship. She has not made payments in five years. She recently received notification that the pandemic deferral was expiring, but her loans will remain deferred due to her financial status. (Tr. 60-61)

Applicant testified that she intends to pay her delinquent debts and wants to pay them. Her husband testified on her behalf. He affirmed that their finances were impacted due to deaths and illnesses in the family. He has been working extra hours to make more money and is working parttime as a handyman. Recently his car transmission needed to be replaced and it cost \$4,800. It remains at the repair shop while he makes payments. (Tr. 62-68)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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 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. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

Analysis

Guideline F: Financial Considerations

The trustworthiness concern relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's debts started to be delinquent in about 2016. None of the SOR debts are paid or being resolved. Applicant does not have the resources to pay or resolve her debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed her delinquent debts to unemployment, underemployment, and helping family members in need. These conditions were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. At this point, Applicant does not have the resources to pay her delinquent debts. AG ¶ 20(b) partially applies. There is no evidence Applicant received financial counseling. There are not clear indications the problem is being resolved or under control. There is no evidence she has made a good-faith effort to repay overdue creditors or otherwise resolve debts. Her debts remain unresolved and unpaid. None of the mitigating conditions apply.

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 the 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.

Applicant failed to meet her burden of persuasion under Guidelines F, financial considerations. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns raised.

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.l: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Carol G. Ricciardello
Administrative Judge