



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



In the matter of:)
)
) ADP Case No. 06-23337
)
)
Applicant for Public Trust Position)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns arising from her financial considerations. Moreover, she falsified her public trust position application. Eligibility for a public trust position and access to sensitive information is denied.

Statement of the Case

Applicant submitted her Public Trust Position Application (SF 85P) (GE 1) on December 28, 2005. On July 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹

¹ The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on October 4 and November 19, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on December 24, 2007. On January 3, 2008, Applicant requested a hearing date on the first week of February 2008, because she had just delivered a baby. DOHA issued a Notice of Hearing on January 16, 2008. I convened the hearing as scheduled on February 8, 2008. The government offered exhibits (GE) 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted exhibits (AE) 1 through 4, which were received without objection.² DOHA received the transcript of the hearing (Tr.) on February 19, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted SOR ¶ 1.a-1.c, 1.h, 1.i, and 1.o with explanations. She denied the allegations in SOR ¶ 1.d-1.g, 1.j-1.n, and 2a. Her admissions are incorporated herein as findings of fact. After a thorough review of the evidence, including Applicant's demeanor, I make the following additional findings of fact.

Applicant is a 28-year-old information technology engineer employed by a government contractor. Applicant has had a difficult upbringing. At age nine, she was placed in foster care due to her mother's drug abuse and neglect. At age 15, she had her first child. And, at age 17, she undertook the responsibility of raising two of her younger sisters, then ages 11 and five.

She married her spouse in February 1999. She currently has four children for whom she provides care and support; her 13-year-old daughter, her 15-year-old autistic sister, a seven-year-old child in her foster care since around July 2007, and a one-month-old baby she just delivered (Tr. 71, 104). Applicant's State provides her with financial assistance for taking care of her autistic sister (approximately \$650 a month), and for taking care of a foster child (approximately \$1,300 a month) (Tr. 118). At the time of the hearing, she was considering filing for divorce (Tr. 103). She is attending her sophomore year in college.

Applicant's work history (GE 1) reflects she has been, for the most part, consistently employed since August 1998 to the present as a typist, receptionist, clerical support, and office administrator. From November 2002 to July 2005, she worked for a federal contractor as a word processor II. In December 2005, she was hired by her current employer, a federal contractor, and requires access to sensitive information to perform her job. Since 1998, she has been unemployed during the following periods of time: from July to December 2005, and from January to April 2000 (GE 1).

² AE 4 was submitted post-hearing. I kept the record open to allow Applicant time to submit additional documentation. Department Counsel's memorandum, stating no objections to me considering Applicant's post-hearing submission is included in AE 4.

Applicant's background investigation addressed her financial situation and included the review of her April 2007 response to DOHA interrogatories (GE 2), and two credit bureau reports (CBRs) from January 2006 (GE 4), and November 2006 (GE 3). The SOR alleges 15 delinquent/charged off accounts totaling approximately \$12,600. The alleged debts are supported by the government's evidence.

Applicant and her husband acquired most of her delinquent/charged off debts when she was young and immature (around age 18), and was not aware of the adverse consequences of having bad credit. She grew up alone, and with no adult supervision or mentoring. She and her husband opened credit card accounts, maxed out their credit, and never attempted to pay or resolve their debts (Tr. 50-52). It was not until July 2006, when she was confronted by a government investigator about her delinquent debts that she realized the number and extent of her bad debts. Until then, she believed she only owed around \$3,000 on bad debts (Tr. 57).

After her interview with the government investigator, Applicant claimed she began her attempts to resolve her bad debts by identifying the creditors (successor collection agencies), and contacting some of the creditors to establish payment agreements. She presented no documentary evidence to support her claim. It was not until after receipt of the July 2007 SOR that she began her efforts to resolve her debts.

Concerning her charged off debts over seven years old (SOR ¶¶ 1.a and 1.e), Applicant has elected not to contact those creditors and avail herself of the protection of the statute of limitations. She was told by a credit consultant that if she was to contact those creditors, they would re-open the charged off accounts and charge her with additional fees, interests, and penalties.

Applicant claims to have an off-and-on relationship with her husband. Through out their years together, he has provided limited or no financial support to Applicant or her children. She averred most of her financial problems are due to his taking her money and not paying for rent, mortgage, and other debts. Since they have been together, they have been evicted at least three times for their failure to pay rent. In 2000, Applicant and her husband purchased two time share properties. She claimed she was paying for one, and she believes her husband is not paying for the other time share (Tr. 98-99). She was trying to sell her time share property.

In July 2006, Applicant and her husband purchased a \$305,000 home with a monthly mortgage of \$2,900. In October 2007, she stopped making mortgage payments because she did not have the money, and the mortgage is in default. As of her hearing, she had the home under contract on a "short sale" (AE 4). The short sale would pay for the first mortgage, but would not cover the \$60,000 second mortgage. She claimed the second mortgage holder told her they would not come after her for the \$60,000 she would owe after defaulting on the second mortgage (Tr. 88-91, 114). She presented no evidence, other than her testimony, to corroborate this claim.

Applicant's monthly income fluctuates because she does not work 40-hour weeks consistently. When she is allowed to work 40-hour weeks her take home pay is around \$2,400 a month. Since July 2007, she has not been able to work 40-hour weeks because of health problems, and she is not entitled to paid sick leave or vacations. She stopped working completely around November 2007 due to her pregnancy. She was supposed to start working again during the later part of February 2008. She has been using some of her autistic sister's and foster child money to pay for daily expenses and her current debts.

Applicant's evidence shows she made the following payments (AE 4): (1) two \$40 payments in November 2007 and February 2008 allegedly to the debt collector for SOR ¶ 1.h; (2) in February 2008, she made a \$50 payment to the collector of the debt in SOR ¶ 1.o; (3) one \$50 payment to the creditor in SOR ¶ 1.c; (4) apparently, in February 2008, she refinanced the delinquent debt in SOR 1.b, and now has a current debt of \$2,245; (5) concerning SOR 1.i (unpaid judgment from December 2002, for a bounced check) on February 29, 2008, she agreed to pay \$40 monthly for a debt now owing \$1,481; (6) concerning SOR ¶ 1.l, she offered to pay \$265 in March 25, 2008 to settle this debt; and, (7) concerning SOR ¶ 1.m, she made arrangements to return past due cable TV equipment to the provider. She claimed she has not been able to identify the collectors for the delinquent debts alleged in SOR ¶¶ 1.d, 1.g, 1.k, and 1.n.

Three of these debts are related to medical bills which she failed to pay and now claims she cannot identify either the provider or the debt collector. Ten of the delinquent debts listed could be considered small debts because the total owed per debt is less than \$1,000. She plans to pay any remaining delinquent debts using her 2008 income tax refund. She claimed she talked to a debt consolidation service once, but elected not to use their services. She has never received or participated in any financial counseling.

Applicant raised numerous factors that could be considered mitigating circumstances that prevented her from paying her debts, i.e., being a single mother, inadequate or lack of financial support from her husband, medical and health problems, providing care and support for four children, and fluctuating or inadequate income.

Applicant stated numerous times her willingness to pay her delinquent debts; however, at the present she cannot afford to do so. Her income is not sufficient to pay for her debts and her day-to-day living expenses. Applicant presented no evidence of any measures she has taken to avoid future financial difficulties. She did not seek or receive any financial counseling. Applicant's references consider her strong-minded, considerate, and loyal. Her references confirm most of her current problems were caused by her husband's neglect and lack of financial support.

In December 2005, Applicant submitted a public trust position application (GE 1). In response to question 20 (asking whether she was or had ever been 180 days delinquent on any loan or financial obligation), she answered "No," and deliberately failed to disclose her delinquent debts identified in SOR ¶¶ 1.1-1.n.

Applicant offered several explanations for her failure to disclose the required information, i.e., she misunderstood the questions, she did not understand the security clearance process, she was not aware of a lot of the delinquent debts, she believed some of the debts were paid by her husband, a credit consultant told her to disregard debts over seven years delinquent, and when she answered “No,” she did not mean to say she had no delinquent debts (Tr. 37-38, 42).

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.”³ “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.”⁴ The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.⁵

When evaluating an Applicant’s suitability for a public trust position, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified 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 controlling adjudicative goal is a fair, impartial and common sense 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 classified information will be resolved in favor of national security.”⁶ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on

³ See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.

⁴ See Regulation ¶ C6.1.1.1.

⁵ See Regulation ¶ C8.2.1.

⁶ See *Department of the Army v. Egan*, 484 U.S. 518, 528, 531 (1988).

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 security decision.

A person who seeks access to classified 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 classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the trustworthiness concern is that an Applicant’s

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

As of her hearing day, Applicant had 15 delinquent debts, including a judgment which had been charged off or in collection for many years, totaling approximately \$12,600. AG ¶ 19(a) (inability or unwillingness to satisfy debts), AG ¶ 19(c) (a history of not meeting financial obligations), and AG ¶ 19(e) (consistent spending beyond one’s means . . .), apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns. After considering all the mitigating conditions (MC), and the record evidence as a whole,⁷ I conclude that none of the mitigating conditions fully apply. Applicant presented little evidence of efforts taken to contact creditors, or to resolve any of the debts since she acquired them up to the date she received the SOR. Nor is there any evidence that she has participated in any financial counseling.

I specifically considered 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances”) and AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), and conclude that they apply, but only to a limited extent.

Applicant’s testimony raised mitigating factors that may be considered as circumstances beyond her control contributing to her inability to pay her debts, i.e., she was a single mother at age 15, received inadequate or no financial support from her husband, medical and health problems, providing care and support to four children, and fluctuating or inadequate income.

These claims demonstrate circumstances beyond her control; however, Applicant’s evidence is not sufficient to show she has dealt responsibly with her financial obligations. She presented little evidence to show paid debts, settlement agreements, documented negotiations, payment plans, budgets, financial assistance/counseling from the day she acquired the debts to the day she received the SOR. Conversely, the evidence shows she maxed out her credit card accounts, purchased a vehicle, two time shares, bought a \$300,000 home, and indulged in other luxuries without regard to her delinquent obligations. Applicant’s failure to pay or resolve a December 2002 judgment filed against her for a bounced check until after her DOHA hearing shows her lack of financial responsibility.

Regarding AG ¶ 20(d), I considered all of Applicant’s recent efforts to pay or resolve her delinquent obligations. Notwithstanding, Applicant’s last minute efforts to pay long delinquent debts, and to make payment arrangements to pay other debts, do not constitute good-faith efforts to resolve her debts. Applicant failed to establish a track record of financial responsibility, that she received financial counseling, or that the problem is being resolved or is under control (AG ¶ 20(c)). She also failed to show that she properly disputed the legitimacy of any of the debts (AG ¶ 20(e)). Based on the available evidence, her financial problems are recent, not isolated, ongoing, and are likely to be a concern in the future.

⁷ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

Guideline E, Personal Conduct

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG ¶ 15.

The record evidence established Applicant deliberately failed to disclose relevant information in her answers to question 20 of her public trust application. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, her level of education, her employment history, her demeanor and testimony, the number and value of the debts, her long term disregard of the debts, and the lack of credibility of her excuses. She knew or should have known the importance of accurate completion of her public trust position application, and nevertheless failed to provide information that was material to making an informed trustworthiness determination. Disqualifying Conditions (DC) 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .*, and DC 16(e): *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress . . .*, apply.

I specifically considered all Guideline E Mitigating Conditions (MC) and conclude that none apply. Applicant's falsification is recent, and her favorable information is not sufficient to apply any of the MCs.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance 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(a),

(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 security clearance must be an overall common sense 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. Applicant is a mature, hard-working woman. She has been successful working since at least 1998 as a clerk, typist, and office assistant. She has worked for defense contractors for approximately five years. She is a dedicated mother who takes care of her children, her sister, and a foster child.

Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns arising from her financial considerations and personal conduct.

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.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a :	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge