



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



In the matter of:)
)
) ADP Case No. 12-06126
)
)
Applicant for Public Trust Position)

Appearances

For Government: Caroline Heintzelman, Department Counsel
For Applicant: *Pro se*

03/23/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a public trust position to work in the defense industry. Applicant had an \$11,000 delinquent debt, which she paid in 2012, and seven other delinquent obligations totaling approximately \$2,000. Based upon a review of the case file, pleadings, testimony, and exhibits, eligibility for access to sensitive information and eligibility for a public trust position is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial public trust position. Acting under the relevant DoD Directive,¹ the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) on May 14, 2015, detailing financial considerations trustworthiness concerns. On June 15, 2015, Applicant answered the SOR and

¹ Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), 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.

requested a hearing. On September 16, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on October 6, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 5 and Applicant's Exhibit A were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. One additional document, Ex. B, was admitted without objection. On October 14, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In her Answer to the SOR, Applicant admitted the debts, with explanation, and asserted some had been paid. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is a 39-year-old network developer who has worked for a defense contractor since March 2012, and seeks to obtain a public trust position. (Ex. 1, Tr. 13) Her annual salary is approximately \$40,000. (Tr. 16) Her take-home pay is approximately \$1,000 every two weeks. (Tr. 33) She shares expenses, rent, utilities, food, and other expenses, with her roommate who makes \$65,000 to \$70,000 annually. (Tr. 16) Starting in January 2011, she was unemployed for approximately a year before obtaining her current job. (Tr. 14) While unemployed, she received unemployment compensation of \$296 per week and occasionally received \$168 monthly child support payments. (Ex. 2)

Applicant has three daughters, ages 20, 15, and 14. (Tr. 15) She currently receives no child support. (Tr. 34) One daughter was diagnosed with Lupus when she was 14 years old. (Tr. 22) Another daughter has only one kidney and is subject to kidney infections requiring medical treatment. (Tr. 22) Applicant has health care insurance which covers part of the medical expenses. Three of the eight delinquent SOR debts were for medical treatment: SOR 1.d, \$150; SOR 1.f, \$77; and, SOR 1.g, \$50. Her daughter's father was responsible, per court order, for paying these medical debts totaling \$277, but failed to do so. (Tr. 21) Applicant is making \$25 monthly payments on the medical bills. (Tr. 28)

Applicant's student loans of approximately \$40,000 to \$50,000 are in deferment. She has discussed the debt with the creditor and they have agreed to \$100 monthly payments once the deferment ends. (Tr. 28) The largest of the SOR delinquent accounts (SOR 1.h, \$11,288) was paid in January 2012. (Ex. A) In her April 2012 Personal Subject Interview (PSI) she stated this debt had been paid in January 2012. (Ex. 2) She is current on the only credit card she has. That account has an \$800 balance.

The debt in SOR 1.a (\$200) became delinquent when Applicant lost her job. (Tr. 23) She does not believe she owes the entire amount. She has contacted the creditor to

set up a repayment agreement. (Tr. 23) She attempted to contact the creditor of the \$330 charged-off account (SOR 1.b), but discovered the loan company was no longer in business. (Tr. 23) She contacted the creditor of the department store credit account (SOR 1.c, \$964) and was told they have no information about the debt. (Tr. 23) Applicant believes she paid this account. She has not recently received any requests for payment of this debt. The telephone bill (SOR 1.e, \$150) became delinquent when she lost her job. She contacted the creditor and will contact them again. (Tr. 25)

Applicant incurred a \$4,600 obligation for furniture, which was not listed in the SOR. She was current on the account until her middle daughter was hospitalized. (Tr. 21, 26) She has established a repayment agreement with the creditor whereby she makes monthly payments of \$35. (Tr. 19, 26) The payment is automatically taken from her bank account. (Tr. 26, 36) She maintains a written budget. (Tr. 32)

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) “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.” (See Regulation ¶ C6.1.1.1.) 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. (See Regulation ¶ C8.2.1.)

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 sensitive information 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.” 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

Adjudicative Guideline (AG) ¶ 18 articulates the trustworthiness concerns relating to financial problems:

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 sensitive information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a public trust position. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

The record evidence supports a conclusion Applicant has had financial problems. The SOR listed eight delinquent accounts totaling more than \$13,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

The SOR listed approximately \$13,000 of delinquent debt of which Applicant has paid the largest debt (SOR 1.g, \$11,288) in January 2012. The other seven debts total less than \$2,000. Applicant's financial problems were contributed to by her unemployment prior to obtaining her current job in March 2012. Three of her delinquent obligations are debts for medical treatment. She has paid the majority of the delinquent debts. AG ¶ 20(a) applies.

Under AG ¶ 20(b), two of Applicant's daughters have serious medical conditions. One has Lupus and the other has only one kidney and is subject to kidney infections. The medical conditions and her unemployment are conditions beyond her control. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant paid the largest debt (SOR 1.g, \$11,288) in January 2012. She is making monthly payments on a non-SOR obligation and is in contact with another creditor to establish a repayment agreement. When she contacted the creditor of her second largest debt (SOR 1.c, \$964), a debt she believes she paid, the creditor had no information about the debt. There is a clear indication her financial problems are under control. AG ¶ 20(c) and ¶ 20(d) apply.

The remaining debts total approximately \$1,000, which are of insufficient magnitude to raise concerns about her current reliability, trustworthiness, or good judgment.

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(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 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries.

The largest of the SOR debts has been paid, and she believes she paid the second largest debt. The remaining SOR delinquent accounts total approximately \$1,000. The issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a public trust position. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a position of public trust. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a –1.h: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for access to sensitive information and eligibility for a public trust position is granted.

CLAUDE R. HEINY II
Administrative Judge