



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



In the matter of:)
)
) ADP Case No. 12-11343
)
)
Applicant for Public Trust Position)

Appearances

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

10/05/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant's eligibility to occupy a public trust position is denied.

Statement of the Case

Applicant completed and signed a Questionnaire for Public Trust Position (SF 85P) on June 5, 2012. The Department of Defense (DOD) Consolidated Adjudications Facility, (CAF) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guideline F, financial considerations on March 14, 2015. 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 For Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on March 24, 2015. She answered the SOR in writing on April 1, 2015, and she requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 28, 2015, and I received the case assignment on June 8, 2015. DOHA issued a notice of hearing on June 25, 2015, and I convened the hearing as scheduled on July 15, 2015. The Government offered five exhibits (GE), 1 through 5, which were received, marked, and admitted into evidence without objection. Applicant testified. Applicant did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on July 23, 2015. I held the record open until August 17, 2015, for the submission of additional matters. Applicant did not submit any documentation. The record closed on August 17, 2015. Applicant provided a post-hearing email, which is marked as hearing exhibit (HE) 1.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.f, 1.g, 1.i, and 1.n - 1.s of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.a, 1.c - 1.e, and 1.j - 1.m of the SOR.¹ She also provided additional information to support her request for eligibility for a public trust position.

Applicant, who is 25 years old, works as a billing and enrollment specialist for a DOD contractor. She began working for her employer in May 2012.² She worked in a temporary position from March 2012 until May 2012 after being unemployed for three months. In the late summer and fall of 2011, she worked several temporary positions, with some short periods of unemployment, after she was terminated from her job of eight months in the communications industry. Applicant and her family moved from State A to State B. She experienced a short time of unemployment after her move.³

Applicant graduated from high school, and she attended college for about two years. She is certified as a medical assistant. Applicant is single and the mother of a 15-month-old son. She lives with her mother.⁴

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²In a recent email, Applicant advised that her employment ended on August 18, 2015. HE 1.

³GE 1; GE 2; Tr. 17-20.

⁴GE 1; Tr.14-17.

Applicant earns \$14.17 an hour for a total monthly gross income of \$2,267. Her net monthly income totals approximately \$1,980. Her monthly expenses include \$500 for rent, \$100 for utilities, \$360 for a car payment, \$90 for a cell phone, \$85 for car insurance, \$120 for gasoline, \$420 for child care, \$150 for food, and \$50 for student loan debt. Her monthly expenses total approximately \$1,875, leaving approximately \$105 for debt payment.⁵

The SOR identifies three unpaid education loans (1.a - \$3,302, 1.g - \$751, and 1.p - \$1,684), which total \$5,737. Applicant indicated that she was paying \$50 a month on her education loans and had been since late 2013. She also stated that all her education loans were being consolidated. She did not provide any documentation from the Department of Education, its collection agent, or her banking account showing her payments. Likewise, she did not provide documentation from the Department of Education showing the consolidation of her loans.⁶

The SOR lists six medical bills (1.e - \$780, 1.h - \$272, 1.k - \$175, 1.l - \$175, 1.m - \$33, and 1.n - \$2,211) totaling \$3,646. Applicant advised that she had medical insurance through her employer and the state for several years and that these bills should have been paid. She also acknowledged that she sought medical treatment at an emergency room in 2011 when she did not have medical insurance. She has not taken any steps to resolve these debts or have them resubmitted to her insurance company for payment.⁷

Finally, the SOR lists ten unpaid, collection debts (1.b - \$1,833, 1.c - \$1,591, 1.d - \$809, 1.f - \$757, 1.i - \$266, 1.j - \$212, 1.o - \$9,328, 1.q - \$1,202, 1.r - \$321, and 1.s - \$91) totaling \$16,410. At the hearing, the parties agreed that allegations 1.c and 1.q are the same, reducing the total debt by \$1,202. Applicant has not provided documentation showing that she paid these bills, that she disputed the debts she denied, or otherwise taken steps to resolve her debts.⁸

Policies

Positions designated as ADP I and ADP II are classified as “sensitive positions.” 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 national interests. 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

⁵Tr. 20-23.

⁶Tr. 23-26.

⁷Tr. 27, 30.

⁸Tr. 27-41.

Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made.

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 over-arching 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. 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 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 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

The trustworthiness concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise trustworthiness concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant unpaid debts over a six-year period of time. She has been unable to pay any of the debts, which total almost \$25,000. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The Financial Considerations guideline also includes examples of conditions that can mitigate trustworthiness concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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

(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.

Applicant experienced several short periods of unemployment, which impacted her ability to pay her monthly expenses, making AG ¶ 20(b) potentially applicable as unemployment is a factor beyond her control. However, she has taken no steps to resolve any of her debts, thus the second part of this mitigating condition, acting responsibly under the circumstances, is not established, making the mitigating condition not applicable.

Applicant advised that she is paying her student loans, but she failed to provide documentation, such as a statement from the creditor or Department of Education or a copy of her bank statement, showing her payments. Thus, AG ¶ 20(c) cannot be applied to her education loans.

After reviewing the remaining mitigating conditions, I have concluded that none apply. Applicant has not mitigated the trustworthiness concerns based on her finances.

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) 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. The decision to grant or deny a trustworthiness determination requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a trustworthiness concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a public trust position should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate trustworthiness concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually

paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has experienced short periods of unemployment, which impacted her ability to pay her bills. Although requested, Applicant has not provided any documentation showing payments on her education loans or her disputes of unknown debts. She has not provided documentation showing any action to resolve her significant debts. She lacks the resources to pay most of her debts, but could resolve her smaller debts one at a time. She had no plan to pay her debts, except possibly her education loans. She has failed to carry her burden of proof in mitigation.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude Applicant has not mitigated the trustworthiness concerns arising from her finances under Guideline F.

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.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.s:	Against Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge