



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



In the matter of:)	
)	
)	ADP Case No. 13-01008
)	
Applicant for Public Trust Position)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

09/18/2014

Decision

LYNCH, Noreen A., Administrative Judge:

On November 7, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing trustworthiness concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination in lieu of a hearing.¹ Department Counsel submitted a File of Relevant Material (FORM), dated June 6, 2014.² Applicant received the FORM on July 24, 2014. She submitted additional information for the record. I received the case assignment on

¹Applicant requested a hearing initially. However in March 2014, Applicant declined a hearing and requested an administrative determination.

²The Government submitted 16 items in support of its case.

September 10, 2014. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Eligibility for a position of trust is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted allegations under Guideline F, ¶¶ 1.a-1.e and denied the remaining three allegations. (Item 2)

Applicant is 50 years old. She is a technical writer with a defense contractor. She received her undergraduate degree in 1985. Applicant is divorced, and she has two adult children. Applicant has been employed with her current employer since December 2012, but she has been gainfully employed since 2003. The record does not reflect if she has previously held a position of trust. On April 2, 2013, she completed a security clearance application. (Item 5)

The SOR alleges eight delinquent debts totaling approximately \$79,177. These include federal tax liens, a state tax lien, and collection accounts. (Item 1) Credit reports confirm the debts. (Items 8, 9 and 16)

Applicant explained in her Answer that her financial issues are the result of the economic downturn combined with family medical issues. (Response to FORM) She noted that the alleged debts in the SOR have been in repayment status for at least two years. However, she explained that the last three accounts have been settled and are not on her credit reports. (Item 2)

In June 2013, during an investigative interview, Applicant explained that she was late in filing taxes in past years. When Applicant worked as an independent contractor from 2004 until 2008, she received 1099 forms which reflected that federal taxes had not been deducted for the tax years 2005 until 2009. When contacted by the IRS in approximately 2010, Applicant owed about \$30,000 for taxes. She contacted the IRS and set up a payment plan of \$150 a month. She believed the balance was about \$22,000. Applicant's state taxes were also not paid. She believes the amount owed is about \$12,000. (Item 15) She did not disclose any negative financial information in her recent 2013 security questionnaire.

The record reflects that Applicant has been a technical writer for 30 years. She had a short period of unemployment and medical bills for her parents. Applicant did not elaborate or provide more details about the situation. She has no credit cards. Applicant has not sought any financial counseling. (Item 15)

As to the 2008 judgment in the amount of \$15,853, Applicant admitted the debt. She claimed that the account has been in repayment status for the past three years. She provided documentation of \$150 monthly payments for the year 2014. She states the debt will be settled at the end of next year. (SOR 1.a)

Applicant is in repayment status for the federal tax lien in the amount of \$34,617. (SOR 1.b) She stated that she has been in repayment status for two years. Applicant

submitted documentation that showed a monthly payment of \$150 as of December 2013. She noted in her answer that she is currently negotiating an Offer in Compromise. She further stated that the IRS has suspended required payments at this time as it is under negotiation. She did not provide any documentation to substantiate this assertion, nor is there any information on the balance owed at this time.

Applicant admitted the 2010 federal tax lien in the amount of \$9,732 (SOR 1.c) She provided no corroboration of her assertion that this debt is also in repayment status and is part of the total debt in SOR 1.b.

As to the \$8,042 in SOR 1.d for a federal tax lien, Applicant said that this is the same as the debt in SOR 1.b.

Applicant admitted that the state tax lien in the amount of \$7,792 (SOR 1.e) has been in repayment status for about two years. She submitted documentation to show that she has paid \$150 monthly for the year 2014.

Applicant denied that she had any delinquent debts as alleged in SOR 1.f, g, and h. She stated that the debts had been settled and "charged off. She did not provide any documentation that the accounts have been settled or resolved.

The record does not reflect Applicant's monthly net income or any financial information. She reported that she pays no rent and has no car loan. She traveled abroad for over one month in 2011.

Applicant submitted a letter of reference from a former supervisor who recommended her highly. He has known her for almost 25 years. Applicant, according to the reference, exemplifies the level of responsibility required and is dedicated to her family, community and country. Applicant is trustworthy, ethical, and consistently dependable.

Applicant submitted a letter of reference from a colleague and friend who has known her for almost ten years. Applicant is described as extremely competent, trustworthy and professional. She is dedicated to her job and is a team player.

A March 2014 employee performance review rated Applicant as a team player and consistently exceeding standards.

Policies

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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 [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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to sensitive information enters into a fiduciary relationship with the Government based on 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 sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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.”⁶ “The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a position of public trust does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a position of public trust.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

Analysis

Guideline F, Financial Considerations

The trustworthiness concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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."

Applicant's admissions and credit reports establish her delinquent debts, federal tax liens, and state tax liens. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate trustworthiness concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." "An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications." ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. She has not provided sufficient documentation that she has settled three accounts. The status of the federal tax liens is not clear from the documented information. The delinquent obligations remain. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant stated that the financial difficulties occurred due to an economic downturn and medical bills. However, she did not elaborate nor provide specific nexus to her financial situation. As to the tax issues, she should have been aware that she would owe tax as an independent contractor. Applicant did not prove that she experienced circumstances beyond her control that caused her financial issues, and has acted responsibly. She has been steadily employed. But it is not clear when she started the repayment due to insufficient information. As to the state tax lien, it does appear that she has been addressing the tax liens and has acted responsibly in that matter. However, she did not provide documentation that she settled the other accounts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant has been paying the federal and state tax debts. She did not present evidence that she received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. She is making some efforts to address her delinquent debts. However, given the ultimate burden, I find that there are not clear indications that her financial problems are being resolved and are under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a trustworthiness position by considering the totality of an applicant's conduct and all the relevant 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 position of trust must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 50 years old. She has worked for her current employer since 2012. It is not clear from the record whether she previously held a position of trust. She has been a technical writer for 30 years. She has letters of recommendation. She has been making payments to the IRS. It appears that the payments began in 2013. Although there were circumstances that occurred beyond her control, she did not establish that she acted responsibly under the circumstances. The tax years involved are from 2005. I have doubts about her financial responsibility.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate her demeanor, or credibility. In relying on the written record, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and fully mitigate the financial trustworthiness concerns.

The clearly consistent standard indicates that trustworthiness determinations should err, if they must, on the side of denials. A denial of her eligibility for a public trust

position does not necessarily indicate anything adverse about Applicant's character or loyalty. It means that Applicant has presented insufficient mitigation to meet the strict standards controlling access to sensitive information.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	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 a position of trust. Eligibility for access to sensitive information is denied.

NOREEN A. LYNCH.
Administrative Judge