



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



In the matter of:)
)
) ADP Case No. 13-01265
)
)
Applicant for Public Trust Position)

Appearances

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

September 18, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is delinquent on six accounts in the amount of \$84,404. None of her delinquent accounts have been satisfied or otherwise addressed. She has not mitigated the Financial Considerations trustworthiness concerns. Eligibility for access to sensitive personal information is denied.

Statement of the Case

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on August 1, 2013. (Item 4.) On December 19, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why the Department of Defense could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a Sensitive Systems Position (ADP-I/II/III). 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); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006. (Item 2.)

Applicant submitted an Answer to the SOR on January 22, 2014. (Item 3.) In her Answer, she requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on April 1, 2014. The Applicant received the FORM on April 18, 2014, and was given 30 days to submit any additional information or object to the material submitted by Department Counsel. Applicant expressed no objections, and did not submit any information within the time period of 30 days after receipt of a copy of the FORM. The case was assigned to me on September 15, 2014. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to sensitive personal information is denied.

Findings of Fact

The Applicant is 28 years old. She is married. She earned a bachelor's degree in 2010. She has worked for her current employer since September 2011. She was unemployed from June 2011 to September 2011. (Item 4; Item 5.)

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for a trustworthiness determination because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant is alleged to be indebted on six accounts in the amount of \$84,404. Applicant admitted all of the allegations found in ¶¶ 1.a through 1.f. (Answer.)

Credit reports dated March 2014 and August 2013 show each of the debts identified on the SOR. Her debts consist of two student loans totaling \$82,945 (SOR ¶¶ 1.a and 1.b); a \$535 debt placed with a collection company (SOR ¶ 1.c); a delinquent telecommunications bill for \$470 (SOR ¶ 1.d); a medical debt of \$294 (SOR ¶ 1.e); and a cable bill of \$160. These accounts all became delinquent between 2010 and 2013. Additionally, her March 2014 credit report reflects two additional delinquent medical debts, each for \$100, placed for collections after the SOR was issued. (Item 5; Item 6; Item 7.)

Applicant indicated, in her Answer, that she intended to address each of her delinquent debts one at a time. However, she included no documentation of payments, payment arrangements, or communications with her creditors to support her claim. Each of the debts identified in ¶¶ 1.a through 1.f are unresolved. (Answer.)

Applicant submitted no evidence of financial counseling or other efforts to establish financial responsibility. She provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive personal information. She submitted no character references describing her judgment, trustworthiness, integrity, or reliability. I was unable

to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a trustworthiness determination, the 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, which are useful in evaluating an applicant's eligibility for access to sensitive personal 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 AG ¶ 2 describing 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. In addition, the administrative judge may rely on common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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 the 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 personal 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 such information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive personal information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern 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 classified 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. Two are potentially applicable in this case:

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

Applicant accumulated six delinquent accounts, in the amount of \$84,404. The oldest of the SOR-listed debts has been delinquent since 2010. Applicant has not made payments on her debts. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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, 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.

Applicant has the burden of showing that future delinquencies are unlikely to occur and that her financial decisions do not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant still has a significant amount of delinquent debt. She failed to present sufficient evidence that she is addressing her debts in a responsible manner or that she has the means and discipline to resolve them. She indicated that she would repay her debts, but she failed to present evidence that she has made any payments. Further, her most recent credit report shows she continues to incur delinquencies. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant failed to present evidence to show that her financial problems were largely beyond her control. A number of her debts were incurred after she became fully employed in 2011. Since gaining full-time employment, she has done little to address even the smallest of her delinquent debts. Further, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant failed to demonstrate a track record of responsibly addressing her delinquent accounts. She failed to produce any evidence of payments on her debts. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant presented no evidence that she attended financial counseling. Further, there is no indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

An applicant is not required to establish that she has paid off each debt listed in the SOR. All that is required is that an applicant demonstrates that she has established a plan to resolve her financial problems and has taken significant actions to implement that plan.¹ In this case, Applicant has indicated her plan is to resolve her debts through payments one at a time. However, Applicant has not documented any steps she has taken to implement her plan. She has not demonstrated a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

Applicant presented no evidence to show that she was in the process of formally disputing any of her debts or that she successfully disputed any of her debts in the past. AG ¶ 20(e) is not applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust by considering the totality of the applicant's

¹ ISCR Case No.07-06482 at 3 (App. Bd. May 21, 2008.)

conduct and all 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has a history of financial indebtedness. Her financial irresponsibility is ongoing toward more than \$84,400 in delinquent debt, which continues to grow while she fails to address it. Her debts did not arise under circumstances that were shown to be beyond her control. She offered no evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of her life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of trust. For all these reasons, I conclude Applicant has not mitigated Financial Considerations trustworthiness concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a determination of trustworthiness, suitability, and eligibility for Applicant to hold a Sensitive Systems Position (ADP-I/II/III). Eligibility for access to sensitive personal information is denied.

Jennifer I. Goldstein
Administrative Judge