



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



In the matter of:)	
)	
)	ADP Case No. 13-01274
)	
Applicant for Public Trust Position)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, and the Government's File of Relevant Material (FORM), I conclude Applicant failed to mitigate concerns regarding financial considerations. Her request for access to sensitive information is denied.

Statement of the Case

On December 30, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing trustworthiness concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ In Applicant's Answer to the SOR, notarized on January 30, 2014, she admitted 24 of the 25 debts alleged in the SOR. She also requested a decision without a hearing. (Item 4)

¹ Adjudication of the case is controlled by DOD Regulation 5200.2-R, *Personnel Security Program* (January 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 by DOD on September 1, 2006.

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a File of Relevant Material (FORM) dated March 7, 2014. It contained the Government's argument and documents to support its preliminary decision to deny Applicant's request for eligibility for a public trust position.² Applicant received the FORM on March 27, 2014 and was given 30 days to respond. She did not submit a response. The case was assigned to me on November 5, 2014.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact.

Applicant is 33 years old. Her application for a position of trust indicates that she is unmarried and has no children. She lives with a boyfriend, who is unemployed. She attended college from 1999 to 2003, and received a bachelor's degree. In 2007, she obtained a teaching certificate. Since 2003, she has worked as a store manager, a customer service representative, a bartender, a restaurant worker, and at a group home for mentally and physically challenged individuals. During a period of unemployment from December 2004 to April 2005, she received unemployment compensation. She started her current employment in November 2012. Her position as a customer service representative requires public trust eligibility. (Items 5, 6)

The SOR alleges Applicant has delinquent debts totaling approximately \$97,000. The debts appear in Applicant's credit reports dated January and September 2013 and March 2014. In January 2013, an investigator of the Office of Personnel Management (OPM) conducted a subject interview (SI) with Applicant. During the review of her debts, Applicant stated her delinquencies stem from low-paying jobs and her resulting inability to pay her educational and medical expenses. (Items 6, 7, 8, 9)

Applicant financed her education through student loans. They are listed in the SOR at allegations 1.o – 1.v, and total \$92,740. It appears from the credit reports that Applicant owes approximately \$62,000 to creditor A and approximately \$30,000 to creditor B. During her **January** 2013 security interview, she explained that she could not afford the \$750 monthly loan payment to creditor A, because of her low net monthly pay of about \$1,200. She contacted the creditor and was told she could either pay that amount or her wages would be garnished. She agreed to a garnishment of \$150 per month. She also noted she was informed a government program would be available to help her with paying the student loans. The file contains no other information about the program, or if any changes have occurred that would affect the garnishment. (Item 6)

² See Directive, Enclosure 3, Section E3.1.7. The FORM included ten documents (Items 1 - 10) proffered in support of the Government's case.

Applicant's March 2014 credit report shows changes to her student loan accounts. The balances on four loans have increased since the SOR was issued (allegations 1.o, 1.p, 1.q, and 1.r). Two others have decreased: the loan at allegation 1.u has decreased from \$14,604 to \$13,495; and the one at allegation 1.v decreased from \$15,711 to \$15,035. The loans at allegations 1.s and 1.t show a zero balance. The record contains no explanations; it may be that the garnishment has resulted in payoffs and reductions in these balances. (Items 6, 7, 9)

Medical debts comprise the second largest group of delinquencies in the SOR. In approximately 2009, Applicant fell down stairs and suffered a spinal injury. As a result, she accrued medical bills between 2009 and 2010. The 15 SOR allegations relating to delinquent medical accounts (1.a, 1.c – 1.m, 1.w – 1.y) total \$3,789. Seven medical debts are less than \$100; the remaining medical debts range from \$128 to \$1,485. Applicant stated in her security interview that she was unable to pay the bills because she had no health insurance. In her Answer to the SOR, she provided a copy of an application she submitted in January 2014 for a financial assistance program sponsored by the hospital involved. In the application, she listed no household income. (Items 4, 6)

The SOR also includes two additional debts: allegation 1.b is a telephone account with a delinquent balance of \$281, and allegation 1.n, a credit card account with a delinquent balance of \$912. Applicant denies owing the credit card debt. She stated during her security interview that she had a payment plan for the account. Although she paid off the balance, it was sold to a collection agency. She attempted to remove the account from her credit report, without success. However, in her Answer to the SOR, Applicant stated, "I did not have a job to be able to pay it. I was told at 7 years it would come off my credit report but it was sold." (Item 6, 7, 8, 9)

Applicant has not had financial counseling. However, she stated during her security interview that her finances have improved, and her current position has approximately doubled her income. At that time, she planned to work toward resolving her past-due debts based on her increased income. She also stated she would contact each creditor to pay the debts or establish payment plans. However, several months later, in her October 2013 interrogatory response, she stated she was unable to set up a payment plan for her student loans because other financial issues arose including gas and electric company bills, water and sewage expenses, and unexpected car repairs. Applicant also noted that sometime between January and October 2013, she had emergency surgery to remove her appendix. (Item 6)

In October 2013, Applicant completed a personal financial statement (PFS). She listed net monthly income of \$1,780. With monthly expenses of \$1,350, her monthly net remainder (MNR) was \$430. She also noted that she had other non-recurring expenses that she did not include in the PFS. Applicant did not list payment on any of the SOR debts. (Item 6)

Policies

Each decision regarding a public trust position must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).³ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them because they represent policy guidance governing the grant or denial of access to sensitive information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

A trustworthiness decision is intended only to resolve the questions of whether it is clearly consistent with the interests of national security⁴ for an applicant to either receive or continue to have access to sensitive information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke access to sensitive information for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a “right” to a sensitive position, an applicant bears a heavy burden of persuasion.⁵ A person who has access to sensitive information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The standard of “clearly consistent with the interests of national security” compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁶

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the trustworthiness concern pertaining to financial considerations:

³ Directive. 6.3.

⁴ See DOD Regulation 5200.2-R, ¶ C2.1.1 and ¶ C6.1.1.

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The SOR lists 25 delinquent debts, totaling approximately \$97,000. Applicant's debts comprise student loans and medical debts. Applicant provided no documentation showing efforts to pay or establish payment plans for any of the debts. The following disqualifying conditions apply under AG ¶19:

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

The financial considerations guideline also contains factors that can mitigate trustworthiness concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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;
- (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's student loans have been delinquent since after she graduated in 2003. Her medical debts have been past due since about 2009. The delinquencies are recent because most are still unpaid. Applicant's lack of efforts to pay these debts casts doubt on her judgment and reliability. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) applies where an individual experiences events over which she had

no control, and which affected her finances. Here, Applicant receives some mitigation because she suffered a spinal injury in 2009 that resulted in medical debts. She also had an emergency appendectomy in 2013, although the record contains no information on how this affected her finances. She also had low-paying jobs since she graduated college, and was unable to meet her student loan obligations. It appears that this situation did not change appreciably until she earned increased income from her current position, starting in November 2012. However, for full application of this mitigating condition, an applicant must act responsibly regarding the unforeseen circumstances. Here, although Applicant's income has doubled in the past two years, and she had a \$400 monthly net remainder as of October 2013, there is no record evidence she has used these discretionary funds to deal with her delinquencies. Applicant receives partial mitigation under AG ¶ 20(b).

As to AG ¶ 20(d), Applicant has not brought her delinquent debts under control. Her current debt load is more than \$90,000. She has made no voluntary payments, and has no payment plans in place. Despite increased income, she has not paid small debts under \$100. The only changes appear to be in several student loans. Given the limited information in the record, it appears these reductions result from the garnishment of her pay, which does not constitute a good-faith effort. AG ¶¶ 20(d) does not apply.

Applicant denied the debt at SOR allegation 1.n, which refers to a credit card account with a balance of \$912. She disputes that she owes the debt because she paid it through a payment plan. However, contradictory information in her Answer to the SOR indicates she was unable to pay the debt, and was waiting for it to be dropped from her credit report based on the statute of limitations. She did not provide evidence about the reason for her dispute, or of her actions to resolve it. AG ¶ 20(e) does not apply.

Whole-Person Analysis

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

AG ¶ 2(c) requires that the ultimate determination of whether to grant access to sensitive information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's history includes positive factors, such as her education and work experience. There is no evidence Applicant fails to timely pay her living expenses such as rent, utilities, or other monthly bills. Her debts are not related to gambling, or abuse of alcohol or drugs. There is no evidence Applicant lives beyond her means.

However, the negative factors are more substantial. Applicant has had two years since she began the process of applying for a public trust position in 2012. Her financial situation has improved, and she has had sufficient discretionary funds available to start resolving her debts. Yet the record shows no evidence that Applicant has made an effort to pay her delinquent debts or set up payment plans.

Doubts remain about Applicant's reliability and judgment based on her failure to take steps to meet her financial obligations. Overall, the evidence fails to satisfy the doubts raised about Applicant's suitability for a public trust position. For all these reasons, I conclude Applicant has not mitigated the concerns raised by the financial considerations guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.y	Against Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge