



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



In the matter of: XXXXXXXXXXXX, Xxxxxx Xxxxx Applicant for Public Trust Position)))))	ADP Case No. 14-00047
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Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

12/17/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s eligibility for a public trust position.

On 24 February 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 3 October 2015, the day Applicant’s response to the FORM was due.

¹Consisting of the File of Relevant Material (FORM), Items 1-5.

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January 1987 pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the adjudicative guidelines (AG) effective within the DoD for SORs issued after September 1, 2006.

Applicant provided no additional documents. DOHA assigned the case to me 1 December 2015.

Findings of Fact

Applicant admitted the SOR financial allegations. She is a 34-year-old customer service representative sponsored for a public trust position by a defense contractor since September 2013.³ She is the never-married mother of two sons, born in June 2006 and April 2010. Her September 2013 clearance application states that she was unemployed from November 2012 to September 2013 and August to October 2011. She was employed part time from June 2007 to May 2011. She has not previously had a trustworthiness determination.

The SOR alleges, Government exhibits (Items 3-5) substantiate, and Applicant admits 29 delinquent debts totaling over \$13,000. The debts comprise 17 delinquent medical accounts totaling about \$4,300, incurred between 1999 and 2010, and 12 delinquent consumer credit accounts totaling nearly \$8,900.

During her October 2013 interview with a Government investigator (Item 5), Applicant attributed her debts to periods of reduced working hours, spans of maternity leave, and short spans of unemployment. Applicant disclosed 12 of the SOR debts on her clearance application (Item 3), and acknowledged all the SOR debts during her subject interview. Applicant told the investigator that she had contacted a debt solution company, but had not made any decision about whether to retain their services. She has not made any documented efforts to resolve these debts.

Applicant provided no budget or personal financial statement indicating her family's financial situation. She has not documented any credit or financial counseling. She provided no work or character references, or evidence of civic or community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

³Applicant's clearance application (Item 4) is a pre-employment application, meaning that her employment is conditioned on her obtaining her clearance.

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter 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 required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. While Applicant's financial difficulties may be reasonably attributable to her periods of unemployment and underemployment, she submitted no information to show she acted responsibly under the circumstances. She documented no efforts to resolve her debts, and did not provide a proposed plan to address them.⁵ She has apparently been employed full time since September 2013, but has done nothing to resolve her debts.

Applicant meets only one of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁶ While her periods of unemployment and underemployment may be circumstances beyond her control, she has documented no efforts dealing with the debts alleged in the SOR, or documenting any efforts to resolve them.⁷ In addition, there is no evidence that she has sought credit counseling or otherwise brought the problem under control.⁸ There is no documentary evidence of any good-faith effort to satisfy the debts alleged in the SOR.⁹ Finally, given her unwillingness to seek or use financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. Moreover, there is

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

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur.

⁷¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances.

⁸¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

⁹¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

insufficient evidence to support a favorable whole person analysis. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-cc: Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge